

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.) 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

VOLUME I OF THE VIDEOTAPED

30(b)(6) DEPOSITION OF TEENA GUNTER, produced
as a witness on behalf of the Defendants in the
above styled and numbered cause, taken on the 27th
day of August, 2008, in the City of Oklahoma City,
County of Oklahoma, State of Oklahoma, before me,
Lisa A. Steinmeyer, a Certified Shorthand Reporter,
duly certified under and by virtue of the laws of
the State of Oklahoma.

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I N D E X

W I T N E S S

P A G E

TEENA GUNTER

Direct Examination by Mr. Hixon

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Signature Page

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Reporter's Certificate

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1 (Whereupon, the deposition began at
2 9:19 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the deposition of Miss Teena Gunter. Today is
5 August 27th, 2008. The time is 9:19 a.m. Would 09:19AM
6 counsel please identify themselves for the Record?

7 MR. LENNINGTON: Dan Lennington for the
8 State of Oklahoma.

9 MR. HAMMONS: Trevor Hammons for the State
10 of Oklahoma. 09:19AM

11 MR. HARDEN: Larry Harden for the
12 Department of Agriculture.

13 MR. HIXON: Philip Hixon for Peterson
14 Farms.

15 MS. TUCKER: K. C. Tucker for the George's 09:20AM
16 entities.

17 MR. HIXON: Folks on the phone?

18 MS. GRIFFIN: Jennifer Griffin for Willow
19 Brook Foods.

20 MR. SANDERS: Bob Sanders for the Cal-Maine 09:20AM
21 defendants.

22 MR. TUCKER: Colin Tucker for Cargill and
23 Cargill Turkey Production.

24 VIDEOGRAPHER: Thank you. The witness may
25 be sworn in.

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TEENA GUNTER

having first been duly sworn to testify the truth,
the whole truth and nothing but the truth, testified
as follows:

DIRECT EXAMINATION

BY MR. HIXON:

Q Can you state your name for the Record,
please?

A It's Teena Gale Gunter.

Q And, Miss Gunter, what's your current 09:20AM
position?

A I'm a deputy general counsel at the Oklahoma
Department of Agriculture, Food & Forestry.

Q How long have you been in that position?

A In that position, approximately probably four 09:20AM
years.

Q Okay, and prior to that position, what
position did you hold?

A I was a staff attorney with the Oklahoma
Department of Agriculture, Food & Forestry in the 09:21AM
agricultural environmental management services
division.

Q Okay, and how long did you hold that position?

A I don't remember exactly when I switched to
that position. I held another position before that, 09:21AM

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1 and then we switched at some point, and I don't
2 recall exactly when that was.

3 Q Okay. Do you have an approximate time?

4 A I went to work for the agency in 1997.

5 Q Okay, and the agency is ODAFF? 09:21AM

6 A Yes.

7 Q And you've been in an attorney position for
8 ODAFF since '97?

9 A No. Originally I served as the assistant
10 director of the water quality services division. 09:21AM

11 Q What did you do in that role?

12 A Our water quality services division is the
13 division -- it's now known as agricultural
14 environmental management services. The name changed
15 a number of years ago. 09:22AM

16 Q Okay.

17 A But that is the division within the agency
18 that regulates environmental animal waste-type
19 issues primarily.

20 Q Okay. Is there any other division or subpart 09:22AM
21 of ODAFF that regulates animal waste issues?

22 A Not currently.

23 Q Okay. Historically has there been?

24 A Historically prior to the creation of the
25 water quality services division, the animal waste 09:22AM

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1 programs resided in one division, then followed by
2 another one. Consumer protection services it's now
3 known as was the original -- as far as I know the
4 original group that handled that, and then the
5 animal industry division also held that
6 responsibility for a time.

09:23AM

7 Q Do you know what time period the consumer
8 protection services was responsible for animal
9 waste?

10 A To my knowledge, it was from the beginning of
11 the -- or the Feed Yards Act, which is approximately
12 early '60s -- or late '60s, early '70s, and that
13 would have been through maybe '95, maybe '96.

09:23AM

14 Q Okay. How about the animal industry group?

15 A They held it for about a year and a half to
16 two years.

09:23AM

17 Q Okay. What period was that?

18 A That would have been either that '95 to '96
19 time period to begin with until July 1st of 1997.

20 Q Okay, and at that point it was consolidated
21 into the one division; is that correct?

09:23AM

22 A At that point the legislature created the
23 water quality services division, and that program
24 was put into that division.

25 Q What was the legislation that created that?

09:24AM

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1 A It was an appropriations bill.

2 Q Let me hand you what's been marked Exhibit 1
3 to your deposition. Have you seen this document
4 before?

5 A Yes, I have.

09:25AM

6 Q Turn to Page 9 and 10, poultry growing
7 operations and management of poultry litter. Are
8 you here to testify on these topics today?

9 A Yes, sir.

10 Q Okay, and are you covering all sixteen topics?

09:25AM

11 A Yes, to the best of my ability.

12 Q And you understand that you are here as a
13 representative of the State of Oklahoma?

14 A Yes, I do.

15 Q And that you're speaking on behalf of the
16 State of Oklahoma?

09:25AM

17 A Yes, I do.

18 Q Okay. Who did you speak with today to prepare
19 for this deposition?

20 A Today? I spoke with briefly with Dan
21 Lennington and Trevor Worthen (sic) and Larry
22 Harden.

09:25AM

23 Q Okay, and maybe I added on a qualifier that I
24 didn't mean to add on. Who did you speak with that
25 today -- your deposition was today and not speak

09:26AM

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1 with today; who did you speak with to prepare for
2 your deposition?

3 A A number of folks. I spoke with Shanon
4 Phillips of the Oklahoma Conservation Commission.

5 Q Okay. What were your conversations with Miss 09:26AM
6 Phillips?

7 A Primarily regarding the poultry waste transfer
8 program that they run.

9 Q Okay, and who else did you speak with?

10 A Spoke with Don Meisch of the Oklahoma 09:26AM
11 Department of Environmental Quality.

12 Q What were your conversations with Mr. Meisch?

13 A Discussions regarding any complaints they may
14 have had that were related to poultry.

15 Q Okay. Who else have you spoken with? 09:27AM

16 A I spoke with Mr. Lennington and Mr. Worthen
17 (sic) and also spoke with Dan Parrish of the
18 Oklahoma Department of Agriculture, Food & Forestry.

19 Q Who is Mr. Worthen?

20 A Trevor. 09:27AM

21 Q He's changed his name.

22 A Did I say Worthen?

23 MR. LENNINGTON: Hammons.

24 A I've always done that in my head. I'm sorry.

25 He's my representative in the state house. I'm 09:27AM

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1 closed complaints, those types of things that we've
2 reserved. Also poultry grower files from the
3 Illinois River watershed, all of them. Also all of
4 our complaints that were related to poultry, whether
5 they're active or inactive. Also I brought all of 09:28AM
6 the commercial applicator files, as well as all of
7 the private applicator files that relate to the four
8 counties involved.

9 Q The closed files, what -- can you elaborate on
10 what is contained in the closed files? 09:29AM

11 A Closed files are typically poultry operations
12 that were -- that were in operation and then later
13 closed down, and those files are on a three-year
14 retention period, but we -- or three years beyond
15 litigation, so those are all kind of reserved over 09:29AM
16 in a separate location at the office. Also there's
17 closed complaints. We have a ten-year retention on
18 the complaint files, and so any of those needed to
19 be pulled out or the rest of them were simply
20 maintained because their ten years hasn't come up 09:29AM
21 yet.

22 Q Okay. How long is the three-year retention
23 been in place on the grower files, on closed grower
24 files?

25 A We reworked our retention, our document 09:30AM

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1 retention guidance in -- it's been at least three
2 years ago. Prior to that, we kept everything.

3 Q Okay. Three years ago, would that have been
4 before or after this lawsuit?

5 A It would have been after the lawsuit; 09:30AM
6 therefore, nothing would -- everything is pretty
7 much retained that was related to this, yeah.

8 Q Okay.

9 A We didn't destroy anything.

10 Q There's nothing that's been -- 09:30AM

11 A Right.

12 Q Okay. Is there anyone else that you spoke
13 with to prepare for this deposition today?

14 A I can't remember talking to anyone else
15 specifically. I reviewed a number of websites, 09:31AM
16 reviewed material on those but --

17 Q What websites did you --

18 A I looked at the Oklahoma Conservation
19 Commission website.

20 Q Okay. What did you review on the -- 09:31AM

21 A Oh, I also talked to -- I do remember I talked
22 to J. D. Strong of the Oklahoma Secretary of
23 Environment's office, and I reviewed their website
24 as well.

25 Q What were your conversations with Mr. Strong? 09:31AM

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1 A Specifically asking him about any records that
2 they might have related to the list of questions
3 that were on here, as well as any guidance on other
4 state statutes that they may have reviewed at some
5 point in time, not Oklahoma, and then also discussed 09:31AM
6 these Senate Bill 972 reports that they do annually
7 that his office is responsible for.

8 Q What is the 972 report?

9 A Senate Bill 972 is a -- it's a requirement
10 to -- basically it's the state of the State of 09:32AM
11 Oklahoma's scenic rivers, and that was a legislative
12 mandate that came down in maybe '01 approximately
13 that they were required to do this report, and so
14 they've done one each year since that.

15 Q Okay. You said you visited the OCC website? 09:32AM

16 A Yes.

17 Q And what materials did you review on the OCC
18 website?

19 A Primarily the poultry waste transfer
20 information. 09:32AM

21 Q What other websites did you review?

22 A OSCN for the statutory listings and the office
23 of administrative rules website for versions of the
24 rules.

25 Q Any other websites that you reviewed? 09:33AM

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1 A I don't recall any specifically right now.

2 Q Okay. Did you review any documents in
3 preparation for the deposition?

4 A Yes, sir.

5 Q And what documents did you review? 09:33AM

6 A You want to see the stack?

7 Q Sure.

8 A You want to go through them?

9 Q Tell me generally what's in your stack of
10 documents. 09:33AM

11 A Generally this is statutes and rules, various
12 versions of both the Concentrated Animal Feeding
13 Operations Act and Poultry Act, as well as the
14 administrative rules that goes with those. That's
15 numerous versions of them. Code 590 materials 09:33AM
16 related to -- the current version of it, as well as
17 the previous version.

18 Q Okay.

19 A Cooperative agreements with NRCS, governor's
20 task force from 1997 regarding animal waste and 09:34AM
21 water quality protection task force that was
22 Governor Keating's.

23 Q Okay.

24 A Random documents related to poultry ideas that
25 somebody might want us to do. 09:34AM

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1 Q Okay.

2 A A group of AG opinions that might be
3 applicable, poultry litter transfer program
4 documents, a number of expert reports, as well as
5 historical reports on the Illinois River, and then
6 some historical documents on -- from the
7 Conservation Commission as well on the Lake Eucha.

09:34AM

8 Q Okay. When you say expert reports in that
9 last file, what kind of expert reports are you
10 referring to?

09:35AM

11 A The first one I have here is the expert report
12 of Gordon V. Johnson prepared for this case.

13 Q Okay, and when you are referring to expert
14 reports, you are referring to the experts that have
15 been retained by the Attorney General's Office?

09:35AM

16 A I believe these three have been, yes, Bert
17 Fisher and Dr. Engel, and then in the historical
18 context would be Conservation Commission reports,
19 and these are older. These were not prepared in
20 response to this, as well as some OSU materials and
21 a couple of other reports that were prepared for
22 this, Dr. Cooke and Dr. Welch, Dr. Jan Stevenson,
23 Dr. Christopher M. Taft.

09:35AM

24 MR. LENNINGTON: Teaf.

25 A Teaf. Document for -- it's dated '08, and

09:36AM

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1 it's got a CDM stamp down here. Todd King, that's
2 the name, and then the earlier reports. This is an
3 OSU report. Senate Bill 972 reports that were
4 provided to me from -- that were from OSE, and then
5 I reviewed some database listings that we ran from 09:36AM
6 the AEMS databases.

7 Q Let's go back through the expert reports while
8 you've got them out. Can you give me the dates on
9 these various reports?

10 A Certainly. The first one I'm looking at is 09:37AM
11 Dr. B. Engel, PE, and the name of that report is the
12 Poultry Waste Generation and Land Application in the
13 Illinois River Watershed and Phosphorus Loads to the
14 Illinois River Watershed Streams and Rivers and Lake
15 Tenkiller, and that's dated May 22nd, 2008. 09:37AM

16 Q When were you provided with that report?

17 A It was either last week or Monday.

18 Q Okay, and have you reviewed all these expert
19 reports that you brought with you today?

20 A I've reviewed key portions of them that seem 09:37AM
21 to apply to the list of materials that you were
22 asking for.

23 Q Okay, and what's the next report?

24 A This is the one from J. Berton Fisher, and
25 it's got the title of the case. It is dated May 15, 09:38AM

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1 2008.

2 Q Okay, and is the same true on this, you were
3 provided it last week or Monday?

4 A Yeah, same time as this one.

5 Q Okay. Is that true for all of these expert 09:38AM
6 reports?

7 A Some of them I had already.

8 Q Okay.

9 A So some of them I've had them in the past for
10 other purposes. 09:38AM

11 Q Okay. As we're going through them and
12 reviewing the dates, if you can tell me which of
13 those that you previously had before this week or
14 last week --

15 A Yes, the next one is the expert report of 09:38AM
16 Gordon V. Johnson, PhD. I have to look for a date
17 on this one. Hang on. It was notarized on May
18 13th, 2008.

19 Q Okay.

20 A The next one is the Phase 1 Clean Lakes 09:39AM
21 Project, Diagnostic and Feasibility Study of Lake
22 Eucha. It is -- it was prepared by Kevin Wagner and
23 Scott Woodruff of the Oklahoma Conservation
24 Commission, and it's February of 1997. This is one
25 that I received a new copy of it yesterday, but it's 09:39AM

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1 one I had reviewed in the past, so it's one that I
2 used to have around the office.

3 Q That's not something that was prepared for
4 this?

5 A No, sir. 09:39AM

6 Q For this litigation?

7 A No, sir. The next one is the Illinois River
8 -- excuse me, Illinois River Watershed
9 Implementation Program. It was related to a 319

10 Project done by the Oklahoma Conservation 09:40AM
11 Commission, and it's dated March 31st, 2005.

12 Q Okay. Again, that wasn't prepared for this
13 litigation?

14 A No, sir.

15 Q Okay. What's next? 09:40AM

16 A Comprehensive Basin Management Plan for the
17 Illinois River Basin in the Oklahoma, prepared by
18 Shanon Harwerty for the Oklahoma Conservation
19 Commission.

20 Q And that's Shanon Phillips now; is that 09:40AM
21 correct?

22 A I don't know. Must have been.

23 Q I won't hold you to that. That was prepared
24 for this litigation as well?

25 A I only knew her as Shanon before, and that's 09:40AM

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1 May of 1999.

2 Q Okay. That wasn't prepared for this
3 litigation?

4 A No, sir.

5 Q Okay. What's next? 09:40AM

6 A Next one is a document titled Phosphorus
7 Concentrations Loads and Yield in the Illinois River
8 Basin, Arkansas and Oklahoma, 1997 through 2001, and
9 that was developed by Barbara Pickup, William
10 Andrews, Brian Haggard and W. Reed Green, and I do 09:41AM
11 not have a date of origin on it, but it has the date
12 that it's reviewing. It's '97 through '01.

13 Q Okay. That wasn't prepared for the
14 litigation?

15 A Not to my knowledge. The next one is 09:41AM
16 Eutrophication of Tenkiller Reservoir, Oklahoma and
17 Effects on Water Quality and fisheries. It's the
18 expert report of Dr. G. D. Cooke and E. B. Welch for
19 the State of Oklahoma.

20 Q Okay. 09:41AM

21 A The date -- I don't have a date on that, but
22 it was apparently for the litigations.

23 Q Is there a date that it was notarized?

24 A It's not on there. I've just got some key
25 portions from it is all I brought. 09:41AM

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1 Q Is this one of the ones that you received last
2 week or Monday?

3 A I think I received this one maybe yesterday.

4 Q What's next?

5 A The next document is, and it's excerpts, 09:42AM
6 Nutrient Pollution of Streams in the Illinois River
7 Watershed, Oklahoma, Effects on Water Quality,
8 Aesthetics and Biodiversity. It's the expert report
9 of R. Jan Stevenson, and that's prepared for this
10 case number, State of Oklahoma versus Tyson, et al, 09:42AM
11 and I do not have a date attached to that one
12 either.

13 Q Okay. When did you receive that one?

14 A Yesterday.

15 Q And what's next? 09:42AM

16 A Next document was -- has the case style on it
17 and it's the expert report of Dr. Christopher M.
18 Teaf, and it's dated May 14th, 2008.

19 Q Were you provided the entire reports on these
20 or just portions of them? 09:43AM

21 A Some of these were only the portions of them
22 that were relevant to the questions.

23 Q Okay, and what's next?

24 A Next document is Identification and Evaluation
25 of Viable Remediation Alternatives to Address 09:43AM

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1 Injuries Related to Land Disposal of Poultry Waste
2 Within the Illinois River Watershed. It's by Todd
3 W. King, and the date of it is 5-15-2008.

4 Q Okay. What's next?

5 A The next one is Diagnostic and Feasibility 09:43AM
6 Study on Tenkiller Lake, Oklahoma. It's prepared --
7 it's edited by Nobly Job or Jobe, Environmental
8 Institute of OSU, and it's dated June 1996.

9 Q Okay. What's next?

10 A The next document is the Coordinated Watershed 09:44AM
11 Restoration and Protection Strategy For Oklahoma's
12 Impaired Scenic Rivers. This is what I referred to
13 as the Senate Bill 972 report.

14 Q Okay.

15 A This particular one is dated January 31st, 09:44AM
16 2004 and it's for the calendar year of '03, and this
17 is one of the documents I've had access to and have
18 reviewed in the past.

19 Q Okay, and what's next?

20 A The next one is the -- I believe this is the 09:44AM
21 initial Senate Bill 972. Yes, it is. It's the
22 initial Senate Bill 972 document, again, Coordinated
23 Watershed Restoration and Protection Strategy For
24 Oklahoma's Impaired Scenic Rivers. It's dated
25 January 31st, 2003, so it would have been for the 09:44AM

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1 2002 calendar year.

2 Q Okay, and you testified earlier, that's an
3 annual report?

4 A Yes, yeah, typically comes out in January, and
5 I had reviewed that one in the past as well. 09:45AM

6 Q Okay. Any other agency representatives or
7 documents or websites that you reviewed or anyone
8 you spoke with in preparation for this deposition
9 today that you haven't talked about previously?

10 A I did speak briefly yesterday, I also spoke 09:45AM
11 with Kelly Hunter Burch of the AG's Office. I don't
12 recall any more right now.

13 Q Okay. Was there anyone else in ODAFF that you
14 spoke with other than Mr. Parrish?

15 A Mr. Harden. 09:45AM

16 Q Okay. Who is the general counsel?

17 A Yes, sir.

18 Q Have you been deposed before?

19 A No, I've not been deposed before.

20 Q I assume that you're familiar with the rules? 09:46AM

21 A Yes.

22 Q If you need a break at any point during the
23 day, let me know. It's not an endurance test, at
24 least until we start digging through the boxes, and
25 then we may change that. Okay. You talked a little 09:46AM

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1 bit about ODAFF's organization with regard to animal
2 waste and how it was organized and how it is
3 currently organized. Can you just talk generally
4 about how ODAFF is currently organized and who has
5 responsibility for what? 09:47AM

6 A You mean across the board?

7 Q Generally across the board.

8 A Okay. We have a number of divisions. We have
9 an executive office obviously, which houses the
10 commissioner and the various associate 09:47AM

11 commissioners. We have an administrative office,
12 administrative services division that's responsible
13 for human resources, payroll, purchasing, the

14 various internal agency functions. We have a public
15 information division. We have a market development 09:47AM
16 division. We have a laboratory services division.

17 We have a forest industry services division, an

18 animal industry division, food safety division,

19 agricultural environmental management services

20 division, office of general counsel, the consumer 09:48AM

21 protection services division. We have a wildlife

22 services division and an agricultural statistics,

23 which is actually a federal program that's housed in

24 our building, and it is part of us, natural

25 agricultural statistics service I think through the 09:48AM

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1 USDA.

2 Q What is the ag statistics service; what do
3 they do?

4 A They are the national entity that -- the
5 Oklahoma headquarters are in our building, but 09:48AM
6 they're the national offices responsible for ag
7 surveys. I mean, when they do the Ag Census each
8 year, those are the people that are responsible for
9 preparing that, and various surveys that are

10 provided by the government. They have call staff 09:49AM
11 that make calls. They do all of that kind of stuff,
12 and then they produce their reports. They produce
13 the yield reports for wheat, whatever crop in the
14 state, and they're responsible for the Oklahoma
15 stuff, but they also will make census calls and 09:49AM
16 other such survey calls all over the country.

17 Q Okay. How long has that been part of ODAFF?

18 A Oh, I don't know. As long as I've been there
19 but I don't know.

20 Q Market development, what do they do? 09:49AM

21 A They are the -- how do I want to put it? They
22 help market Oklahoma products. They have the Made
23 In Oklahoma Program. For example, the products you
24 see on the grocery store that are flagged as made in
25 Oklahoma, they're responsible for that program. 09:49AM

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1 They're responsible for several grant programs to
2 assist farmers in diversifying and those kinds of
3 things. They work on international trade issues for
4 the state, as well as they have run an agri tourism
5 program, ag in the classroom program. 09:50AM

6 Q They're not marketing litter?

7 A I'm sorry?

8 Q They're not out there marketing litter?

9 A No, sir.

10 Q Okay. The lab services, what do they do? 09:50AM

11 A It's a full-blown agricultural laboratory, and
12 it is -- we do pesticides, animal health, blood
13 samples we run to see if horses have EIA or TB in
14 cattle, whatever. They also have a full water lab
15 available, and they do seed germination. They do -- 09:50AM
16 they do plant -- pesticide -- I mean, plant disease
17 determinations. They do just almost anything that
18 would be ag related that would need to run through a
19 laboratory test. They've got those up there.

20 Q What testing is done on water? 09:51AM

21 A They do general water quality-type sampling,
22 nutrient analysis. They can get almost as detailed
23 as you want to get on various constituents of it.
24 They -- yeah, they've got -- it's a full-blown water
25 lab these days. They can pretty much test for 09:51AM

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1 anything.

2 Q Okay. Are they testing surface water?

3 A At times. They -- they -- they test surface

4 water, groundwaters. They also test -- and they

5 don't actually go take the samples. They simply

09:51AM

6 process them. They're not responsible for taking

7 the samples. They do groundwater. They'll do

8 lagoon samples from a liquid waste type system.

9 They'll do pretty much -- they'll also do some for

10 the public. The public can come in and pay and have

09:51AM

11 them run samples for their well water or whatever

12 they want.

13 Q Okay. The water testing that's on the surface

14 water, groundwater, the lagoons, is that -- how is

15 that testing done; why is that testing done?

09:52AM

16 A Well, like lagoon sampling, when we're dealing

17 with swine facilities primarily or a cattle

18 operation that has a lagoon, some of those types of

19 operations, frequently an inspector may take a

20 sample of that to just determine concentrations

09:52AM

21 within it and sometimes to fingerprint to determine

22 if that's what caused the discharge, if there was a

23 discharge of animal waste in the vicinity. Also

24 they will sample discharges. We have people that

25 sample those, especially in the LMFO area, licensed

09:52AM

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1 managed feeding operations, which is essentially
2 swine operations, and the -- they'll also -- we have
3 several water quality projects that we started
4 probably 10 to 20 years ago sampling people's water
5 wells that were interested in having them sampled, 09:53AM
6 and there typically were swine facilities in the
7 area, and they will also sample water samples from
8 that facilities as well as the individuals, but
9 that's on a voluntary basis.

10 The other types of sampling, we -- our lab 09:53AM
11 runs the samples. There's a requirement in the
12 Oklahoma -- well, now the Oklahoma Swine Feeding
13 Operations Act that requires groundwater samples at
14 all licensed managed feeding operations, and those
15 would be monitoring well samples. They're each 09:53AM
16 required to have monitoring wells, and those samples
17 are performed by the State through a cooperative
18 agreement with the Oklahoma Water Resources Board
19 and then provided -- and then our lab runs those.

20 Q Okay. How long has the monitoring wells on 09:53AM
21 swine feeding operations been required?

22 A It began in 1998.

23 Q Is there anything similar to that required for
24 poultry operations?

25 A No. 09:54AM

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1 Q The fingerprinting that you mentioned, can you
2 describe what that process is; what's fingerprinted?

3 A I can generally describe it but not in
4 scientific terms by any means. Generally if you
5 take a sample from the lagoon and you take a sample 09:54AM
6 from the discharge, that would be the easiest way
7 for me to explain it, you can look at items, key
8 items, key constituents of that lagoon sample that
9 you can kind of identify things that should kind of
10 match up with what you see. It's -- so you take the 09:54AM
11 lagoon sample and if, for example, the salt content
12 is kind of in the same range on both of them, well,
13 that's one thing that maybe leads us to believe that
14 that's that, and so we just look at various
15 constituents in that, and then just compare them and 09:55AM
16 that gives us a rough idea, and it's not a super
17 scientific method. It's just a rough idea.

18 Q Okay. Do you know what methods are used to do
19 that fingerprinting?

20 A What do you mean by methods? 09:55AM

21 Q Scientific method, PCA analysis?

22 A No. What do you mean P --

23 Q Yeah. If you are going to ask me that, we may
24 move on. Do you know what methods are used to --

25 A I've never looked at it that detailed. I've 09:55AM

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1 just had technical staff describe it to me.

2 Q Okay. What's the commissioner's role in ag
3 regulation?

4 A The commissioner role is the -- he's the -- he
5 held several roles actually. First of all, he's the 09:56AM
6 secretary of agriculture for the governor's cabinet,
7 and then by virtue of that, he's also the
8 commissioner of agriculture and the president of the
9 state board of agriculture. So he's primarily the
10 head of the agency, but he's also a cabinet level 09:56AM
11 position.

12 Q Okay. How is the board of agriculture related
13 to ODAFF; what is the relationship between the two?

14 A The board of agriculture is the -- you could
15 say the governing body for the agency. 09:56AM

16 Q Okay. What's the role of the board?

17 A Their typical role is to approve major
18 purchases. They approve rules. They approve fines.
19 They approve various contracts by the agency. They
20 approve travel for the agency, the out-of-state type 09:57AM
21 travel. They approve documents variously related to
22 some of our grant programs. Any of the major stuff
23 that comes out of the agency that is akin to a final
24 agency decision or whatnot is approved by the board
25 prior to becoming final. 09:57AM

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1 Q Okay. How frequently does the board meet?

2 A Monthly.

3 Q Are those public meetings?

4 A Yes.

5 Q Are minutes kept of those meetings?

09:57AM

6 A Yes.

7 Q Do you know whether those were produced in
8 this litigation?

9 A That's a good question. I don't recall from

10 that first time around if we did that. I don't

09:58AM

11 recall. I can look back. I can check with some
12 folks.

13 Q Okay. If you can do that, I would appreciate
14 it. Would the board discuss animal waste issues or
15 poultry litter issues?

09:58AM

16 A Do you mean in the context of just random
17 discussion or they'll --

18 Q I don't know that random discussion would be a
19 good way to characterize it. Have those issues been
20 topics of discussion since this lawsuit was filed or
21 before the lawsuit was filed in 2005?

09:58AM

22 A Typically they stick with the agenda. We have
23 a set agenda that's posted at least 24 or 48 hours
24 ahead of time, and in the context of if we have a
25 poultry operator maybe that's been brought in for a

09:59AM

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1 fine or brought in for some type of an
2 enforcement-type action, they may discuss that
3 particular case in their deliberations, or if it's
4 related to the -- someone from the department
5 updating them because each of our division directors 09:59AM
6 gives an update to the board, so there may be a time
7 that they would provide an update saying that, you
8 know, we have a number of people being deposed or
9 we're preparing documents for a discovery
10 production, those kinds of things. If there were 09:59AM
11 administrative rules going before the boards, which
12 I don't recall having any poultry rules go before
13 the board during this period of time, but if there
14 were any, then they would discuss the rules in that
15 context in their deliberations on approving those. 09:59AM
16 Q Okay. You mentioned fines.
17 A Uh-huh.
18 Q Would every person that's being fined, would
19 that be presented to the board?
20 A Yes. 10:00AM
21 Q Okay. So any violation --
22 A Anyone that we have sought enforcement action
23 that involves a fine or some type of a final agency
24 order, we would take to the board.
25 Q Okay, and they would approve that? 10:00AM

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1 A Yes.

2 Q Or at least review it?

3 A Yes. They have turned them down before.

4 Q Okay. The agendas, were those produced in the
5 lawsuit? 10:00AM

6 A I doubt that they were. I have not thought of
7 that. We'll need to -- we can get those.

8 Q Okay, and when we were off the Record, you
9 mentioned that you're preparing a supplemental
10 production; is that correct? 10:00AM

11 A Yes, I am, yes.

12 Q I would request that if you haven't produced
13 the agendas and the minutes from the state board
14 meetings, that you would include that in your
15 supplemental production? 10:01AM

16 A I will.

17 MR. HARDEN: Will you send us a written
18 request; can you do that?

19 MR. HIXON: I think I can do that.

20 Q Topic 16 in the notice requested the 10:01AM
21 identities, contact information and position of all
22 current and former State employees who have
23 knowledge about the topics described.

24 A Yes.

25 Q We'll start with an easy one and incredibly 10:01AM

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1 dull, but have you collected the information
2 requested for this Topic 16?

3 A I have collected a detailed list from the
4 agricultural environmental management services
5 division. I've also collected a detailed list from 10:02AM
6 the Oklahoma Department of Environmental Quality,
7 and then I know various other people from the
8 Oklahoma Conservation Commission that have been
9 involved, J. D. Strong and the office of Secretary
10 of Environment, the Oklahoma Water Resources Board 10:02AM
11 and members of the consumer protection services
12 division, as well as a few former employees that
13 were with the animal industry services division when
14 they were in the CAFO program.

15 Q Okay. The list, can I -- 10:02AM

16 A This is the list of AEMS employees and former
17 employees. Some of those are not actually
18 employees. They are actually contract individuals
19 or they are GALT, which is typically office staff
20 assistants that are temporary, and that's the 10:03AM
21 delineations on there.

22 MR. LENNINGTON: Are these your only
23 copies?

24 A Those are my only copies. We can make copies.

25 MR. LENNINGTON: We can make copies of 10:03AM

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1 these.

2 A The first two pages of that one are the
3 Department of Environmental Quality people that were
4 described as current employees and the next two
5 pages were described as former employees. 10:03AM

6 MR. HIXON: Okay. Let's go ahead and mark
7 these as exhibits. Do you want to make copies of
8 these now? We've been going at it about an hour.
9 Let's take a quick break and make copies.

10 VIDEOGRAPHER: We are now off the Record. 10:04AM
11 The time is 10:04 a.m.

12 (Following a short recess at 10:04
13 a.m., proceedings continued on the Record at 10:19
14 a.m.)

15 VIDEOGRAPHER: We are back on the Record. 10:19AM
16 The time is 10:19 a.m.

17 Q Miss Gunter, we were on Topic 16, and you
18 brought some lists here for ODAFF and DEQ, my
19 understanding; is that correct?

20 A Yes. 10:20AM

21 Q Okay. Who prepared this ODAFF list?

22 A This was prepared by Dan Parrish.

23 Q Okay, and the handwriting that's up in the
24 corner on this Exhibit 18 at OCC, AG, J. D. Strong,
25 et cetera, whose handwriting is that? 10:20AM

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1 A That's mine.

2 Q Okay. You said the second page and -- what is
3 now the second page and third page of Exhibit 18,
4 those are current DEQ employees?

5 A According to Don Meisch. 10:20AM

6 Q And did Mr. Meisch prepare this list?

7 A DEQ prepared it and sent it to me.

8 Q Okay. Okay, and then the fourth and fifth
9 pages are former DEQ employees. Is that your
10 understanding? 10:20AM

11 A Yes.

12 Q And did DEQ prepare this list?

13 A Yes.

14 Q You don't know what parameters they used to
15 prepare the list? 10:21AM

16 A No.

17 Q Let's look at the ODAFF list first. The FTEs,
18 the column that's labored FTE, what does FTE mean?

19 A Full-time employee.

20 Q Okay. Contract means contractors? 10:21AM

21 A Independent contractors.

22 Q Okay, and what's GALT?

23 A That's a temporary services agency that we
24 hire some clerical help through.

25 Q Okay. The full-time employees, of course, we 10:21AM

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1 know you. Who is Mr. Michael Vann?

2 A He's one of the Eucha-Spavinaw watershed
3 management team members.

4 Q Okay, and Lagenna Williams?

5 A She formerly was an Eucha-Spavinaw watershed 10:21AM
6 management team member.

7 Q Okay. Janet Stewart?

8 A She's held several positions at the agency,
9 but early on she was an attorney, a staff attorney
10 with the water quality services division. 10:22AM

11 Q Okay. Is she still with ODAFF?

12 A No.

13 Q Who is she with now?

14 A She's with the Oklahoma Conservation
15 Commission. 10:22AM

16 Q Do you know what her role is?

17 A She's the general counsel.

18 Q Lorri Hardin.

19 A She's a new employee coming on 9-2-08 that
20 will be an Eucha-Spavinaw watershed management team 10:22AM
21 member.

22 Q Janet Burns?

23 A She is an administrative assistant for the
24 AEMS division.

25 Q Do you know what criteria was used to prepare 10:23AM

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1 this list?

2 A I asked for a list of individuals that had
3 worked with poultry matters for the agency.

4 Q Okay. Do you know what work --

5 A Miss Burns is the administrative assistant for 10:23AM
6 the division. She's --

7 Q So she's the one that knows it all anyway?

8 A It all comes across her desk probably.

9 Q We know Mr. Parrish. Vinnie McCullah, who is
10 that? 10:23AM

11 A He's a former environmental inspector for the
12 agency.

13 Q Okay, and what kind of inspections did he
14 perform?

15 A He primary did CAFO inspections, some poultry, 10:23AM
16 and his territory was the northeast part of the
17 state.

18 Q Okay. Rita Price, who is that?

19 A Rita Price is a part-time CAFO inspector and
20 then part-time poultry inspector but she's an FTE 10:23AM
21 employee full time from the southeast part of the
22 state.

23 Q Okay. Does she have responsibilities in the
24 Illinois River watershed?

25 A Not typically. 10:24AM

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1 Q Sally Abbott?

2 A She's an administrative assistant with the
3 office.

4 Q Paula Albers?

5 A She is a former administrative assistant with 10:24AM
6 the AEMS division.

7 Q Okay. Norma Aldridge?

8 A She's currently an environmental programs
9 manager position with the agency.

10 Q Okay, and what does an environmental programs 10:24AM
11 manager do?

12 A She assists many of our grant programs. She
13 writes grants. She monitors grants that we've
14 received and worked through.

15 Q Okay. Esther Goldsmith? 10:24AM

16 A She was a former -- I believe her title was
17 administrative assistant also.

18 Q Okay. Gaye Robinson?

19 A She's a former administrative person for the
20 water quality services division. 10:24AM

21 Q Who is Mr. Mike Talkington?

22 A He's a former individual that worked with our
23 CAFO program in the water quality services division.

24 Q Okay. What kind of work did Mr. -- Dr.
25 Talkington do with CAFOs? 10:25AM

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1 A He was partially -- he was a supervisor of the
2 field staff at that time, and he also was or he
3 managed or coordinated the inspections and
4 complaints from the main office.

5 Q Would his area of responsibility cover the 10:25AM
6 Illinois River watershed?

7 A He was over all the inspectors in the state
8 for ag water quality services division.

9 Q Okay. So to the extent there were CAFOs in
10 the Illinois River watershed, he would have that 10:25AM
11 responsibility?

12 A Correct.

13 Q Do you know what his doctorate is in?

14 A He's a veterinarian.

15 Q Okay. David Chandler? 10:25AM

16 A David Chandler is a former general counsel for
17 the Department of Ag, and for a period of time in
18 1997 he was the director of the water quality
19 services division.

20 Q Okay. Christine Simone? 10:26AM

21 A She is an administrative assistant for the
22 AEMS division.

23 Q What about Ada Pfeiffer?

24 A Ada Pfeiffer is a CAFO inspector.

25 Q What area of state is she responsible for? 10:26AM

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1 A Typically north central.

2 Q Greg Turpin?

3 A Greg Turpin is a CAFO inspector.

4 Q Okay, what's his area of responsibility?

5 A Typically the east, south central area of the 10:26AM
6 state.

7 Q Okay. When you say typically, what do you
8 mean by typically?

9 A Well, if someone is not working or if someone
10 is off, they may have to go into someone else's 10:27AM
11 territory.

12 Q How is that handled when somebody is off?

13 A Just the nearest inspector will take care of
14 it.

15 Q Okay. Gary Green? 10:27AM

16 A He's a CAFO inspector.

17 Q What's his area of responsibility?

18 A Southwest Oklahoma.

19 Q What about Keith Smith?

20 A Keith Smith is currently the CAFO inspector 10:27AM
21 for northeast Oklahoma.

22 Q Okay. Does their responsibility take in the
23 counties that are within the Illinois River
24 watershed?

25 A Yes. 10:27AM

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1 Q Doris Atchley?

2 A She's a former administrative assistant for
3 water quality and AEMS.

4 Q Okay. Who is Michelle Sutton?

5 A She was a staff attorney with the water 10:28AM
6 quality services division.

7 Q She's a former employee?

8 A She's a former employee.

9 Q Okay. Do you know where she is now?

10 A She works out of the Tulsa area. 10:28AM

11 Q Is she still with ODAFF?

12 A No.

13 Q Is she still with the State of Oklahoma?

14 A No.

15 Q Rick Frederick? 10:28AM

16 A He's a former -- I believe he was actually a
17 contract employee but he was -- Rick Frederick was
18 an engineer that reviewed CAFO applications in
19 approximately '97.

20 Q Okay. Was that review strictly limited to 10:28AM
21 CAFO applications?

22 A Primarily, yes.

23 Q Okay. Would he have reviewed applications
24 made under the Poultry Feeding Operations Act?

25 A No, it didn't exist at that time. 10:29AM

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1 Q Was he gone before that law was enacted?

2 A Yes.

3 Q Okay. Robert -- I'll let you pronounce that.

4 A Schoeneke.

5 Q Schoeneke, who was he?

10:29AM

6 A He was an employee that worked in the Tulsa

7 office of the Oklahoma Department of Agriculture,

8 Food & Forestry. When he worked for water quality

9 services, he was a -- he did a lot of field work and

10 survey work of poultry operations in the northeast

10:29AM

11 part of the state and really all over the state.

12 Q What kind of survey work?

13 A Early on he would -- he and Ray Elliott would

14 go driving down roads essentially looking for

15 operations.

10:29AM

16 Q Okay. Why were they looking for operations?

17 A This was in -- it was late '97, '98, so they

18 were assigned to go kind of do surveys of that so we

19 could get a picture of how many operations there

20 were out there, where they were.

10:30AM

21 Q Okay, and what was done with those surveys?

22 A They were used as the basic list of who we

23 notified once we had poultry rules and a poultry act

24 on the books of who we notified that they needed to

25 probably get registered under this.

10:30AM

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1 Q Would that survey still exist?

2 A I've never found it, no, not to my knowledge.

3 Q Okay. Is it something you looked for as part
4 of the ODAFF's document production?

5 A Yes, yes, some time ago. 10:31AM

6 Q Okay. Ray Elliott?

7 A He assisted Robert Schoeneke. They worked as
8 a pair out of the Tulsa office and conducted these
9 surveys together.

10 Q Is he still with ODAFF? 10:31AM

11 A No.

12 Q Tyler Hicks?

13 A He's a former administrative assistant.

14 Q Okay. Kimberly Hornbuckle?

15 A She was an engineer and reviewed CAFO 10:31AM
16 applications.

17 Q Okay. Did she review any applications under
18 the Registered Poultry Feeding Operations Act?

19 A She may have, but I don't recall specifically.

20 Q Is she still with ODAFF? 10:31AM

21 A No.

22 Q Do you know when she left?

23 A It's been at least five to six years.

24 Q Okay. So approximately 2002, 2003?

25 A Yes. 10:32AM

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1 Q Chi Ming Lee, who is that?

2 A She was an administrative assistant.

3 Q Okay. Let's go to contract employees. John

4 Littlefield, he's a poultry inspector; is that

5 correct?

10:32AM

6 A Yes.

7 Q Is he still with ODAFF?

8 A Yes.

9 Q Who is Foster Johnson?

10 A He's a contract poultry inspector.

10:32AM

11 Q And does he have responsibilities for

12 northeastern Oklahoma?

13 A No.

14 Q Okay. Where is his area of responsibility?

15 A Part of LeFlore County and then east through

10:32AM

16 Stigler and several of those counties.

17 Q David Berry, he's another poultry inspector;

18 is that correct?

19 A Yes.

20 Q Okay, and he does have responsibility within

10:32AM

21 the IRW?

22 A Yes.

23 Q Okay. Randy Thompson, who he is?

24 A He's a contract poultry inspector.

25 Q What's his area of responsibility?

10:33AM

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1 A Southeast Oklahoma primarily.

2 Q Quang Pham?

3 A Quang Pham?

4 Q Yes. Who is that?

5 A He's a contract professional engineer. 10:33AM

6 Q Okay, and what does he do?

7 A He's one of our technical writers, and he
8 prepares and reviews some animal waste management
9 plans.

10 Q And those animal waste management plans, would 10:33AM
11 they be for growers in the IRW?

12 A Yes, some of them would be.

13 Q Okay. Dr. Jim Shirazi, who is he?

14 A He is a contract technical person.

15 Q Okay. What kind of technical person is he? 10:34AM

16 A His major fields would be soil science and
17 hydrogeology.

18 Q Okay. What kind of work does he do in
19 relation to poultry production?

20 A His work with poultry production would involve 10:34AM
21 drafting some waste management plans, review of any
22 issues that come through that are related to that.
23 He's also our primary person that can evaluate water
24 samples, et cetera, that might be related.

25 Q Okay. Would his area of responsibility take 10:34AM

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1 in the Illinois River watershed?

2 A Yes.

3 Q What is his doctorate in; do you know?

4 A I believe it's in hydrogeology and soil
5 science.

10:35AM

6 Q Dr. H. J. Thung, who is he?

7 A Dr. Thung is a former contract professional
8 engineer.

9 Q Okay, and what did he do when he was with the
10 agency?

10:35AM

11 A He worked on CAFO application issues,
12 developed guidance documents, and towards the end of
13 his tenure did some -- I believe worked some on the
14 waste management plans with the other technical
15 staff.

10:35AM

16 Q Do you know when he left the agency?

17 A Probably two years ago.

18 Q Do you know where he is now?

19 A Retired.

20 Q Do you know where he lives?

10:35AM

21 A Oklahoma City or Norman, Norman.

22 Q Norman. Harold Springer, who is he?

23 A He's a current professional engineer on
24 contract.

25 Q Okay, and what does he do?

10:36AM

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1 A He is -- he works on CAFO applications. He
2 works on poultry waste management plans, guidance,
3 all of those sorts of things.

4 Q Okay, and does he cover the Illinois River
5 watershed as well? 10:36AM

6 A Yes.

7 Q Okay. Danny Hodges?

8 A Danny Hodges is a contract technical service
9 provider for drafting waste management plans.

10 Q Okay, and what kind of services did he provide 10:36AM
11 with regard to animal waste management plans?

12 A Primarily he drafts those. He's part time.

13 Q Ed Abernathy, who is he?

14 A He's one of our contract drafters of animal
15 waste management plans. 10:36AM

16 Q R. C. Brinlee, who is that?

17 A He's also a contract drafter of animal waste
18 management plans.

19 Q Okay. Mr. Abernathy, do you know what his
20 educational background is? 10:37AM

21 A All I know about Ed is he was a former NRCS
22 employee.

23 Q Okay. What about Mr. Brinlee, what is his
24 educational background?

25 A I don't know. 10:37AM

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1 Q Gary Fisher, who is he?

2 A He's a former poultry inspector for the
3 department, contract.

4 Q What was his area of responsibility when he
5 was with the agency? 10:37AM

6 A Part of the Illinois River watershed was his
7 primary responsibility.

8 Q Okay, and Michael May, who is that?

9 A Michael May is a former poultry inspector for
10 the division. 10:37AM

11 Q Okay, and did he cover any part of the
12 Illinois River watershed?

13 A He was primarily in southeast, Oklahoma.

14 Q Let's move to these GALT employees. Patricia
15 Davis, who is she? 10:38AM

16 A She's a former employee with the department or
17 former employee of GALT that is one of our temporary
18 people. We have a contract with GALT, and she was a
19 clerical.

20 Q Linda Glover, what did she do? 10:38AM

21 A Clerical.

22 Q Melissa Moorhead, what was her responsibility?

23 A Clerical.

24 Q Toni Reynolds?

25 A Clerical. 10:38AM

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1 Q What kind of clerical activities did these
2 people have with regard to poultry production?

3 A Answering the phone and taking complaints,
4 filing, scanning, trying to start a scanning project
5 and just overall maintenance of the files. 10:39AM

6 Q Okay. What was the scanning project you
7 mentioned?

8 A We're really trying to go paperless.

9 Q Okay. What were they scanning?

10 A CAFO files and poultry files. 10:39AM

11 Q So are these -- the files that you have in
12 these various boxes, have these been scanned; do you
13 know?

14 A Probably very small portion of them.

15 Q Do you know what -- 10:39AM

16 A But I know not all of them at all.

17 Q Okay. The DEQ listed employees, do you know
18 who any of these people are? Let me rephrase that.
19 Do you know who all of these people are?

20 A No. 10:40AM

21 Q Do you know what an environmental program
22 specialist is?

23 A Often that is either an inspector position.
24 Sometimes it's an office staff member.

25 Q Okay. What type of inspector would DEQ have 10:40AM

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1 that would have responsibilities for poultry?

2 A They have regional inspectors all over the
3 state and some of these -- well, on the right
4 column --

5 Q Uh-huh. 10:40AM

6 A -- there's -- it shows what office they are
7 assigned to.

8 Q Okay. What is the ECLS designation next to
9 the location?

10 A It's the environmental -- I can't remember the 10:41AM
11 whole acronym. It's their division that handles
12 their complaints.

13 Q Okay. Do you know which of these offices, the
14 first two, Burns Flat, Shawnee, do you know when of
15 these offices would handle complaints in the 10:41AM
16 Illinois River watershed?

17 A On Page 2 there's a Clyde Mason listed, and
18 he's in the Miami office. I'm pointing out just the
19 northeast Oklahoma ones.

20 Q Do you know if Clyde Mason has responsibility 10:42AM
21 for the Illinois River watershed?

22 A I do not.

23 Q Okay. Do you know where the Miami office has
24 responsibility?

25 A I'm not sure how they're broken down, if they 10:42AM

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1 take two counties or one county or if there's a
2 separate office in each county. I'm not sure about
3 that.

4 Q Okay. The same page we go down, Peggy Pogue
5 in Jay. Do you know whether that would cover any 10:42AM
6 portion of the Illinois River watershed?

7 A I don't know for a fact. It's in Delaware
8 County.

9 Q Jonathan Robinson, Tahlequah, I assume a
10 portion -- 10:43AM

11 A Tahlequah is in the watershed.

12 Q -- of the Illinois River watershed is covered
13 in that? Okay. Are there any people on this list
14 of current or former employees that you know who had
15 responsibility within the Illinois River watershed? 10:43AM

16 A Lynne Moss on the current is over the
17 complaints and has taken complaints that we've seen
18 in our office related to that watershed.

19 Q Okay. What type of complaints would DEQ
20 receive related to poultry? 10:44AM

21 A They have a 1-800 complaints hotline that's
22 kind of a repository for all complaints that people
23 can call in there, and then they'll divvy it out to
24 the appropriate agency.

25 Q Okay. Is there anyone else on this list that 10:44AM

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1 you know who has any responsibility for complaints
2 in the Illinois River watershed?

3 A That's the only individual name I recognize.

4 Q All right. Let's go to your handwritten notes

5 on the front page. OCC, who at OCC would have 10:45AM

6 information about these topics in the notice?

7 A Mike Thralls, Shanon Phillips, Dan Storm,
8 former employer Phil Moerschel.

9 Q How do you spell that?

10 A M-O-E-R-S-C-H-E-L. 10:45AM

11 Q Do you know what Mr. Moerschel did when he was
12 with the OCC?

13 A He was in their water quality division.

14 Q Okay. Anybody else?

15 A Ben, the assistant director -- I've gone blank 10:45AM
16 on his name. It's Ben -- I'll think of it.

17 Q Is that the assistant director of the water
18 quality division?

19 A He's the assistant director of OCC.

20 Q Of OCC, okay.

21 A Also a former employee was John Hassell.

22 Q Okay, and what did Mr. Hassell do?

23 A At the time he was with the State, he was the
24 director of the water quality division.

25 Q Do you know what period that was? 10:46AM

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1 A It was from -- I don't know when he began, but
2 '97 through maybe '98 I know he was there as
3 director.

4 Q Okay. Anyone else?

5 A Another director was Scott Stoodley. He was a 10:46AM
6 director of their water quality division.

7 Q Do you know how to spell Stoodley?

8 A S-T-O-O-D-L-E-Y, I believe.

9 Q Okay. Anyone else at OCC?

10 A Eldon McAfee. 10:46AM

11 Q What did Mr. McAfee do?

12 A He's responsible for putting together the
13 litter reports that OCC does every year based on our
14 applicators' reports that come through our office.

15 Q Okay. Is he still with OCC? 10:47AM

16 A Yes.

17 Q Is there anyone else at OCC that would have
18 information regarding these topics?

19 A Janet Stewart, their general counsel.

20 Q Okay. Anyone else? 10:47AM

21 A That's everyone I know of that I can remember.

22 Q Next on your list is AG's.

23 A Certainly I've worked with the Attorney
24 General's Office on this case.

25 Q Okay. Aside from this case, you mentioned 10:48AM

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1 before you had documents from Governor Keating's
2 task force. Do you know of any Attorney Generals
3 who worked on Governor Keating's task force or any
4 of the other task forces that addressed poultry
5 issues in the Illinois River watershed? 10:48AM

6 A I don't remember if there was a member of the
7 AG's Office on the task force, on Governor Keating's
8 task force.

9 Q Okay. Have there been any other task force?

10 A Not to my knowledge related to poultry. 10:48AM

11 Q Actually I will be asking you about another
12 one here a little later, but okay. Any Attorney
13 General representative who was acting in the role of
14 a regulator as opposed to acting as an attorney?

15 MR. LENNINGTON: Objection to the form. 10:49AM

16 Q Are you aware of anyone who's worked on
17 poultry issues in that role?

18 A No.

19 Q Mr. Strong -- is there anyone at DEQ that
20 you're aware of other than the individuals on the 10:49AM
21 list that you've provided that would have knowledge
22 regarding these topics?

23 A It's not their environmental jurisdiction, so
24 it would only be before it was passed on to us.

25 Q Do you know of anyone who would have knowledge 10:49AM

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1 of the issues before it was passed on to ODAFF?

2 A Lynne Moss would be the primary one.

3 Q What about the Water Resource Board?

4 A At the Water Resources Board, I know that

5 Derek Smithey has done work in the watershed related 10:50AM

6 to poultry.

7 Q Okay.

8 A And I'm aware that Phil Moerschel, who was at

9 the Oklahoma Conservation Commission, is now at the

10 Oklahoma Water Resources Board. 10:50AM

11 Q Okay. So you have poultry related --

12 A Well, they're water quality related, and

13 poultry is one of the many things that they would

14 look at in that watershed. They've done work in the

15 watershed. 10:50AM

16 Q Okay. Anyone else at Water Resource Board

17 that you're aware of?

18 A As the head of the agency, Derek -- not Derek

19 -- Duane Smith.

20 Q Okay. Are you aware of any former employees 10:51AM

21 at the Water Resource Board who would have knowledge

22 regarding these topics?

23 A No. I think everyone I knew that I've worked

24 with there is still there.

25 Q Still there, okay. We got the animal industry 10:51AM

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1 folks. Are those people on the list of ODAFF
2 employees or are they separate?

3 A Some of them are. Some of them also were in
4 animal industry services before it was transferred
5 to the water quality division. 10:51AM

6 Q Okay. Are there any of these animal industry
7 people that are not on this list that would have
8 knowledge of these topics?

9 A The former director of that division, Burke
10 Healey, Dr. Burke Healey. 10:52AM

11 Q Okay. You say he was the director?

12 A Former director, yes, during that time.

13 Q Is there anyone else?

14 A No. The remainder would have been transferred
15 to water quality. 10:52AM

16 Q Okay. What about the consumer protection
17 services; is there anyone that's not on Exhibit 18
18 that would have --

19 A That would be -- go ahead.

20 Q -- that would have responsibility or knowledge
21 of the topics? 10:52AM

22 A Sancho Dickinson.

23 Q Okay, and what did Mr. Dickinson do?

24 A He was an inspector in the watershed many
25 years ago and he did surveys of poultry houses. 10:52AM

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1 Q What kind of inspections did he do?

2 A He did primarily nursery inspections in that
3 area, but he was special project -- a special
4 project he worked on was survey of poultry houses in
5 the area. 10:53AM

6 Q Okay, and this is one you described earlier?

7 A No. It's a different one.

8 Q Different than Schoeneke and --

9 A This was in the early '80s to mid '80s.

10 Q Okay, and what was this project? 10:53AM

11 A It was a survey of poultry operations in the
12 area.

13 Q Okay. What did the survey entail?

14 A Just simply spotting them, finding out where
15 they are. 10:53AM

16 Q What was done with the survey?

17 A In approximately '86 or '87 they began a
18 sampling project for the Illinois River regarding
19 nurseries, but as a part of their work in that, they
20 did a survey of other potential sources throughout 10:54AM
21 the region to add to -- to include in that report,
22 but they were focused on nurseries at that time.

23 Q Okay. Was there any sampling done of poultry
24 operations at that time?

25 A Not to my knowledge. 10:54AM

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1 Q Was there a report that was compiled from this
2 survey information?

3 A There's nothing that still exists today that I
4 know of.

5 Q Okay. So when you say there's nothing that 10:54AM
6 exists today --

7 A Not of the survey itself.

8 Q Well, okay. Was there a report that was
9 compiled from that information that would exist
10 today? 10:55AM

11 A From the nursery report?

12 Q From the nursery survey.

13 A Yes.

14 Q Okay. Do you know what that report is?

15 A The Curtis Reports. Those are known as the 10:55AM
16 Curtis Reports.

17 Q Okay, and those are available, the Curtis
18 Reports themselves?

19 A Yes.

20 Q All right. Is there anyone else in consumer 10:55AM
21 protection services?

22 A At that time Robert Schoeneke and Ray Elliott
23 were also members of that division.

24 Q Okay. Anyone that's not on this other list?

25 A Curtis, who the Curtis Report is named for, 10:55AM

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1 was the former director of that division.

2 Q Okay, and do you know what work he did with
3 regard to the poultry production?

4 A He was instrumental in the beginning of the
5 Curtis Report and would have directed that that be 10:56AM
6 done and the surveys and such that went on as a
7 result that Sancho was involved in.

8 Q Okay. Well, these Curtis Reports, they would
9 have started back in the early to mid '80s then?

10 A Probably the mid '80s before there was a 10:56AM
11 published report.

12 Q Okay. Anyone else that you're aware of that
13 would have any information or knowledge on these
14 topics?

15 A Jerry Barker. 10:56AM

16 Q Okay. Who is Mr. Barker?

17 A Mr. Barker ran the concentrated animal or the
18 Feed Yards Act program when it was in consumer
19 protection services. He would have been responsible
20 for handling complaints, handling licensure of any 10:57AM
21 poultry operations that were licensed as a feed
22 yard.

23 Q Okay. Do you know whether there were any
24 poultry operations that were licensed as a feed
25 yard? 10:57AM

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1 A At that time there were a few.

2 Q Okay, and were those in the Illinois River
3 watershed?

4 A At least one, maybe two.

5 Q Do you know what the identity of those 10:57AM
6 operations?

7 A Kendall Country Farms and L & M Farms.

8 Q Do you know where those farms are located?

9 A I have spreadsheets.

10 Q It's in the spreadsheet. Sure, pull the 10:57AM
11 spreadsheet out.

12 A Oh, correction. L & G Farms, not L & M, and
13 they're located in Stilwell, and they're currently
14 licensed still as a concentrated animal feeding
15 operation. 10:58AM

16 Q Okay. What about the Kendall Country Farms?

17 A They're no longer in operation.

18 Q Okay. Where were they located?

19 A They were Adair County.

20 Q How were poultry operations regulated under 10:58AM
21 this Feed Yard Services Act?

22 A At some point the Feed Yards Act essentially
23 mirrored some of the EPA CAFO permitting programs by
24 who was required to get a permit, and at that time
25 it was liquid waste facilities, which there were 10:59AM

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1 more than there are now, but liquid waste
2 facilities, if they had appropriate numbers, would
3 often get that license if they were discharging
4 operations or if they chose to voluntarily get it.

5 Q Do you know when the Feed Yard Services Act 10:59AM
6 was enacted?

7 A Late '60s, early '70s.

8 Q Okay. Do you know how long Kendall Country
9 Farms was in operation?

10 A No. 10:59AM

11 Q How about, do you know when L & G Farms began
12 operations?

13 A I don't have a beginning date on this
14 spreadsheet.

15 Q Well, there have been inspections of these two 11:00AM
16 farms under the Feed Yard Services Act?

17 A Yes.

18 Q Okay. What was inspected; what was the nature
19 of those inspections?

20 A They were reviewing their waste management 11:00AM
21 system, the lagoon.

22 Q Were the operations required to have an animal
23 waste management plan or something the equivalent of
24 an animal waste management plan?

25 A Something equivalent to that during that 11:00AM

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1 period of time as a part -- if they were land
2 applying as a part of their license application,
3 yes.

4 Q Okay, and do you know who wrote those plans?

5 A I don't know who wrote their plans. 11:00AM

6 Q Okay, and when I say who, was it ODAFF that
7 wrote them; was it NRCS that wrote them?

8 A It was not ODAFF.

9 Q Okay. Do you know what agency did write them
10 or -- 11:01AM

11 A I don't know for a fact who wrote them, no.

12 Q Okay. Do you know was required, what
13 requirements had to be contained within the plan?

14 A The early versions that I'm aware of the Feed
15 Yards Act had specific requirements for waste 11:01AM
16 management plans, and they were somewhat unchanged
17 for a very long period of time, and the versions I'm
18 talking about would be approximately '95-'96.

19 Q Do you know what restrictions were placed on
20 land application of -- this is liquid waste; is that 11:01AM
21 correct?

22 A Typically, yes.

23 Q Okay. Do you know what land -- restrictions
24 were placed on the land application of that waste
25 for these two farms? 11:01AM

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1 A I'd have to refer to older versions.

2 Q Okay.

3 A I don't have my earlier sets of rules at that
4 time. I've got House Bill 1522, but it would have
5 been in agency rules to define the parameters of the
6 waste management plan at that time.

11:02AM

7 Q Okay. What is House Bill 1522?

8 A It was at the point which the Feed Yards Act
9 was renamed the Concentrated Animals Feeding
10 Operations Act.

11:03AM

11 Q Okay. When was that enacted?

12 A 1997.

13 Q Okay. Do you have a version of the Feed Yard
14 Services Act with you today?

15 A I thought I did but I don't see it in here.

11:03AM

16 Q Okay.

17 A I must not have grabbed that one. I brought
18 all the poultry versions.

19 Q Okay. So you don't know what the requirements
20 or the restrictions on land application under --

11:03AM

21 A There were restrictions.

22 Q There were?

23 A Yes, there were waste management plan
24 requirements and best management practices.

25 Q Okay. Do you know what those were?

11:03AM

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1 A I can't say without reading it precisely what
2 they were at that time. They've evolved over the
3 years.

4 Q Okay, and you said those were in effect from
5 '95 to '96 approximately? 11:04AM

6 A Well, those would have been in effect long
7 before because they were essentially unchanged for
8 ten years, some of that stuff was.

9 Q Okay, and before we got off on that tangent,
10 we were talking about people. Anyone other than Mr. 11:04AM
11 Curtis or Mr. Dickinson at consumer protection
12 services?

13 A We were talking about Jerry Barker.

14 Q Your memory is better than mine. Okay. Any
15 other one than Jerry Barker? 11:04AM

16 A No. It was a small program.

17 Q Okay. So I think that wraps up Topic 16.
18 Excellent. Only took us two hours. We're well on
19 our way.

20 Let's move on to Topic 15, statutes and 11:05AM
21 regulatory programs in place pertaining to the land
22 application poultry litter or any poultry waste in
23 states other than Oklahoma. Do you know -- let's
24 first begin with Oklahoma itself. Would you agree
25 that ODAFF is the official environmental regulatory 11:06AM

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1 agency for agricultural point source and non-point
2 source pollution within its area of jurisdiction?

3 A Yes. Our environmental jurisdiction is
4 outlined in Title 27A.

5 Q And generally what does that jurisdiction 11:06AM
6 entail?

7 A Point and non-point source discharges and
8 runoff from animal waste, crop production,
9 fertilizer. We also have areas of nurseries,
10 pesticides, groundwater quality, implementation of 11:06AM
11 water quality standards, silviculture, and there may
12 be a couple of others in the itemized list.

13 Q Do you know how long ODAFF has been designated
14 as one of the environmental agencies?

15 A Those designations in Title 27A came about in 11:07AM
16 1994, '93 when the Department of Environmental
17 Quality was created. That same statutory provision
18 lists all the state environmental agencies and their
19 areas of environmental, but prior to that, the
20 department had responsibility for environmental 11:07AM
21 aspects of things within our jurisdiction.

22 Q Okay. What did that jurisdiction entail?

23 A It was pretty much if it involved ag, it was
24 ours.

25 Q Okay. What tools does ODAFF have to regulate 11:07AM

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1 point source pollution generally speaking?

2 A What do you mean by tools?

3 Q Regulations, programs, anything of that
4 nature.

5 A CAFOs by definition are point sources. So the 11:08AM
6 entire CAFO act and Swine Feeding Operations Act
7 define those facilities as point sources.

8 Q Okay, and the CAFO and Swine Feeding
9 Operations Act, that was recently amended; is that
10 correct? 11:09AM

11 A Yes.

12 Q Can you tell me generally what those
13 amendments entail?

14 A The last amendment was simply a splitting of
15 the swine criteria from the remainder of the 11:09AM
16 criteria. So everything that regulates swine was
17 moved to the Swine Feeding Operations Act.

18 Q Okay.

19 A Everything dealing with any other species
20 through the CAFO Act is in the CAFO portion of the 11:09AM
21 act, the new portion of it.

22 Q Okay, and that would include poultry?

23 A Yes.

24 Q Okay. Do you know whether there were any
25 substantive changes to the Act apart from splitting 11:09AM

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1 swine from everything else?

2 A No. It was strictly a verbatim split.

3 Q Do you know why it was split?

4 A Well, the legislature agreed to do it.

5 Q You do whatever the legislature wants to do, 11:10AM
6 okay. Do you know what the occasion was for the
7 legislature to split it?

8 A There was --

9 Q Did ODAFF have any involvement in --

10 A Yes. We always have technical assistance 11:10AM
11 involvement in any bills.

12 Q Okay, and what was ODAFF's technical
13 assistance?

14 A Review of the bills.

15 Q Okay. Did ODAFF make any recommendations to 11:10AM
16 change any substantive provisions of the CAFO Act?

17 A No.

18 Q Could ODAFF have requested substantive changes
19 of the CAFO Act?

20 A Could we request? 11:10AM

21 Q Uh-huh.

22 A Yes, we can request.

23 Q Okay, but that wasn't done?

24 A No.

25 Q With regard to this amendment? 11:10AM

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1 A No.

2 Q Does ODAFF have any responsibility for NPDS
3 permits?

4 A We do not issue NPDS permits out of our
5 office. 11:11AM

6 Q Is ODAFF responsible for monitoring NPDS
7 permits for agricultural operations?

8 A We have an MOA with US EPA Region 6 that we
9 conduct their inspections for the permit.

10 Q Okay. Are there any poultry CAFOs in the IRW 11:11AM
11 that have an NPDS permit?

12 A I believe L & G Farms is the only one that
13 might have it still.

14 Q What inspections are performed under the NPDS
15 permit in this memorandum of the agreement? 11:12AM

16 A We have a joint inspection form developed by
17 US EPA and the department that is -- contains all
18 the requirements for the NPDS as well as all the
19 requirements for CAFO or swine feeding operation,
20 and our inspector goes out one time and does the 11:12AM
21 inspection on the same checklist for both, both
22 agencies, and EPA receives a copy of it.

23 Q Okay. How frequently are those inspections
24 done?

25 A Annually. 11:13AM

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1 Q Okay. Do you know if those inspections were
2 made available to the defendants in this litigation?

3 A They were in the files.

4 Q They were in the files, okay. Do you know
5 whether the NPDS permits for L & G Farms contains 11:13AM
6 any limitations on nutrient discharges?

7 A It's under the general permit for Oklahoma,
8 which contained requirements for animal waste
9 management plans, as well as best management
10 practices and numerous items. 11:13AM

11 Q Are there any other poultry CAFOs in the
12 Illinois River watershed other than L & G Farms
13 currently?

14 A Not that I'm aware of currently.

15 Q Okay. Other than the Kendall Country Farms, 11:14AM
16 are you aware of any CAFOs in the IRW historically?

17 A We have two that are currently licensed as
18 state CAFOs, not as NPDS.

19 Q Okay. Who are those?

20 A Cobb-Vantress, Three Springs Farm. 11:14AM

21 Q Okay, and who is the second one?

22 A Winner Poultry and Dairy.

23 Q Do you know what integrator the Winner
24 Poultry and Dairy farm is associated with?

25 A He does not currently have any birds. 11:15AM

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1 Q Okay. Is he a state CAFO by virtue of the
2 dairy operations?

3 A He voluntarily wanted to be a poultry --
4 wanted to have the CAFO license.

5 Q Okay. For poultry? 11:15AM

6 A Yes.

7 Q Okay. Do you know how long it's been since
8 he's had birds?

9 A Quite awhile I would say. The barn caved in.

10 Q Do you know what integrator he previously 11:15AM
11 contracted with?

12 A No.

13 Q Why would someone voluntarily choose to be
14 subject to poultry CAFO requirements if they don't
15 have any poultry? 11:16AM

16 A He thought it would help him get financing to
17 build new poultry barns and get birds.

18 Q Okay. How would being subject to a CAFO Act
19 help him get financed?

20 A On occasion we've heard that some banks do 11:16AM
21 require a permit before they're going to give
22 someone financing.

23 Q Okay.

24 A And some integrators required them to get a
25 CAFO license in the past. 11:16AM

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1 Q We need to change tapes, so let's take a
2 break.

3 VIDEOGRAPHER: We're now off the Record.
4 The time is 11:16 a.m.

5 (Following a short recess at 11:16 11:16AM
6 a.m., proceedings continued on the Record at 11:36
7 a.m.)

8 VIDEOGRAPHER: We are back on the Record.
9 The time is 11:36 a.m.

10 Q Okay. We were talking about CAFOs before we 11:36AM
11 went on break. You have the Three Springs Farm and
12 Winninger Poultry and Dairy. Are there any other
13 CAFOs, regardless of whether they are poultry or
14 not, in the IRW?

15 A I didn't pull that list because it wasn't one 11:36AM
16 of the questions on here.

17 Q Okay.

18 A They were related to poultry.

19 Q Okay. Do you know if there are other CAFOs,
20 non-poultry CAFOs? 11:37AM

21 A I couldn't speculate without looking at the
22 list.

23 Q Okay. I'm going to use my tools language
24 again. What tools does ODAFF have to regulate
25 non-point source pollution in the Illinois River 11:37AM

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1 watershed?

2 A The CAFO Act and the Poultry Act and the Swine
3 Feeding Operations Act all contain provisions from
4 regulating runoff.

5 Q Okay. Would you consider a TMDL to be a 11:37AM
6 non-point source tool?

7 A It would be one tool.

8 Q Okay. Do you know if there's a TMDL in the
9 Illinois River watershed?

10 A Not to my knowledge. 11:38AM

11 Q Do you know whether ODAFF has provided any
12 information for the development of the TMDL in the
13 Illinois River watershed?

14 A In the past we provided DEQ some information
15 related to the watershed. 11:38AM

16 Q And do you know what that information was?

17 A It was listings of operations, locations of
18 operations that we had contained in our databases.

19 Q Okay, and were those operations point source
20 operations or potential non-point source operations? 11:38AM

21 A Would have been anyone that was listed in our
22 database regulated by the CAFO poultry or today the
23 Swine Feeding Operations Act.

24 Q Okay. Do you know whether you provided any
25 information or assumptions to DEQ with regard to 11:38AM

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1 litter application rates for use in the TMDL?

2 A Assumptions?

3 Q Or data.

4 A We provided our litter applicator reports that
5 we had at that time. 11:39AM

6 Q Okay. What information would be contained in
7 the litter applicator reports?

8 A Each applicator provides a report annually
9 that contains where they got the litter from and
10 where they spread it, soil test analysis, poultry 11:39AM
11 litter analysis, other details of the specific
12 application event.

13 Q And do you know when that information was
14 provided to DEQ?

15 A I don't recall. 11:39AM

16 Q When was the litter or -- yeah, the Litter
17 Applicator Act enacted?

18 A July 1st, 1997.

19 Q So it would have been at least since July 1st,
20 1997 that that information was provided to DEQ? 11:40AM

21 A Would have been after that.

22 Q Okay. Do you know if that was just a one-time
23 production to DEQ or whether that's been an ongoing
24 process?

25 A I know I was involved in it one time. 11:40AM

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1 Q Okay, and when was that approximately?

2 A Probably five to six years ago but no distinct
3 recollection of when it was.

4 Q Okay. These other acts -- when was the

5 Poultry Feeding Operations Act enacted? 11:41AM

6 A July 1st, 1997 -- no. '98. Sorry.

7 Q Prior to 1998, was there any statutory
8 provisions that cover poultry or litter application?

9 A The Concentrated Animal Feeding Operations
10 Act. 11:41AM

11 Q Okay. Did that regulate all poultry
12 operations or only those that qualified under the
13 CAFO?

14 A Only those that qualified as a CAFO.

15 Q Just generally what is the purpose of the 11:41AM
16 Poultry Feeding Operations Act?

17 A The general purpose?

18 Q Uh-huh.

19 A Is to regulate poultry feeding operations
20 within the state of Oklahoma. 11:42AM

21 Q Okay, and regulate what -- to accomplish what?

22 A Registration of all operations in the state.

23 Q Do you know when the last time there was a
24 poultry operation that registered under the Act
25 within the Illinois River watershed, the most recent 11:42AM

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1 application?

2 A I don't have a most recent number on any of
3 those.

4 Q Okay. The information that you had in the
5 spreadsheets that you brought, would that contain 11:43AM
6 the application date?

7 A I can find out. It does not have the
8 application dates on them.

9 Q Who would have that information?

10 A The individual file. 11:43AM

11 Q Okay. Is the information in the files
12 maintained in any kind of database?

13 A Some of the information is contained in a
14 database.

15 Q Okay. What information is contained in a 11:44AM
16 database?

17 A Well, this was taken from the database, PFOs
18 in the Illinois River watershed as of 8-25-08, and
19 have the ID number, last name, first name, address,
20 city, state, Zip, phone number, type, number of 11:44AM
21 birds, number of houses and the inspector.

22 Q Okay. Would the application date be in the
23 database; do you know?

24 A I think it is in the database, and I think
25 there's -- there would be an inactive date for those 11:44AM

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1 that were closed.

2 Q Okay. What I'm -- my question originally was
3 what's the most recent. Would that date be
4 available in this database?

5 A Yes, it should be in the database. 11:45AM

6 Q Can you look that up at lunchtime and bring
7 that information back this afternoon?

8 MR. LENNINGTON: What would you like?

9 MR. HIXON: Just the most recent
10 application of the Registered Poultry Feeding 11:45AM
11 Operation or Act in the Illinois River watershed.

12 MR. LENNINGTON: Okay. We'll call over
13 there and see what they have available.

14 Q Go off on a little bit of a tangent while I'm
15 thinking about it. Earlier we were talking about 11:45AM
16 the board. Do you know whether the Attorney General
17 ever met with the board regarding this lawsuit?

18 A Not that I'm aware of.

19 Q Okay. If there were a meeting, would that be
20 something that there would be -- would it be a 11:46AM
21 public meeting?

22 A If a quorum of board members were there.

23 Q Okay. If there were a meeting, there would be
24 some kind of record of it?

25 A Yes. 11:46AM

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1 Q Can you tell me what the ODAFF's water quality
2 standards implementation plan is?

3 A It's a document prepared by or rules actually
4 prepared by the department in response to statutory
5 requirement that required all state environmental 11:47AM
6 agencies to prepare a water quality standards
7 implementation plan.

8 Q Okay. These rules, who is the regulated
9 community that would be subject to those rules; who
10 do those rules apply to? 11:47AM

11 A Those rules apply to anyone that's expected to
12 comply with water quality standards. It's a
13 knowledge based -- it's a summary of everything that
14 might potentially apply to them.

15 Q Okay. So would it apply -- is there, I mean, 11:47AM
16 a body of the public that it would apply to or is it
17 more -- it's something that ODAFF uses as a guide in
18 regulating?

19 A It's a guidance document, probably better
20 characterized as, but it is promulgated by a rule 11:48AM
21 because the statute requires that.

22 Q Okay, but it's not a body of regulation?

23 A Unto itself.

24 Q Unto itself, but Poultry Farmer Jones goes and
25 says what does the Water Quality Standard 11:48AM

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1 Implementation Act require of me?

2 A Right.

3 Q It's something that would apply to ODAFF?

4 A Yes.

5 Q That it would use in its regulation of water 11:48AM
6 quality standards?

7 A Yes.

8 Q What regulations are there that apply would
9 govern potentially the land application of poultry
10 litter? 11:49AM

11 A Regulations?

12 Q Uh-huh, regulations or statutory provisions.

13 MR. LENNINGTON: Are you speaking -- I
14 don't understand the question. Object to the form.

15 State of Oklahoma or federal law or -- 11:49AM

16 MR. HIXON: State of Oklahoma.

17 MR. LENNINGTON: Okay.

18 A Oklahoma statutes contain the Concentrated
19 Animal Feeding Operations Act that contains some
20 requirements. 11:49AM

21 Q Okay.

22 A Poultry -- Registered Poultry Feeding
23 Operations Act contains some requirements.

24 Q Okay.

25 A Rules pursuant to both of those contain 11:49AM

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1 requirements.

2 Q Okay. What about the Applicator's Act?

3 A The applicators -- the Certified Applicator's
4 Act and Rules.

5 Q Is there any other state statutory provisions 11:50AM
6 or any state rules that apply to land application of
7 litter?

8 A There are general statutes regarding no
9 pollution to waters of the state, those sorts of
10 things, that we have a title. In Title 2 we have a 11:50AM
11 18.1 provision, 2-18.1 that refers to any pollution
12 of air, land and waters is prohibited.

13 Q Is that in Title 2 you said?

14 A Yes.

15 Q Okay. Is there anything else in Oklahoma law 11:50AM
16 that would apply to the land application?

17 A I don't recall anything else related to
18 statute or rules.

19 Q Okay. Is there any federal law that's
20 enforced by ODAFF that would apply to the land 11:51AM
21 application of litter?

22 A We don't enforce federal law.

23 Q Okay. Is there anything similar to your
24 arrangement with the EPA on the NPDS permits?

25 A We perform inspections on behalf of EPA for 11:51AM

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1 facilities that are permitted by them.

2 Q Okay. Is there any other arrangement similar
3 to that between ODAFF and any federal agency that
4 would be related to the land application of poultry
5 litter or water quality? 11:51AM

6 A Wait.

7 MR. LENNINGTON: Object to the form.

8 Q First, land application of litter.

9 A You expanded that dramatically. What do you
10 want to know? 11:51AM

11 Q Any arrangements with ODAFF and any federal
12 agency regarding land application of litter?

13 A We have a grant that we draft plans for the
14 USDA NRCS.

15 Q Okay. What does that grant entail? 11:52AM

16 A We're paid a -- or some of our contract folks
17 are paid -- the department is paid a fee for each
18 waste management plan that we produce for NRCS.
19 They are not department product. They are -- we are
20 the technical service provider essentially in that 11:52AM
21 arrangement.

22 Q Okay. ODAFF is writing animal waste
23 management plans for NRCS?

24 A Yes.

25 Q Okay, and that's covered by a grant? 11:52AM

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1 A The grant is -- pays ODAFF a particular amount
2 per plan.

3 Q Okay, and what body of law requires these
4 animal management or animal waste management plans?

5 A Well, our -- the Poultry Act requires a 11:53AM
6 facility to have the waste management plan, as well
7 as the CAFO Act would, and the applicator does in
8 some cases require one.

9 Q Okay. So the federal grant is paying ODAFF to
10 write plans under the various acts that require an 11:53AM
11 animal waste management plan?

12 A No.

13 Q No?

14 A No, they're not writing -- we're strictly
15 writing them for NRCS as though we were an NRCS 11:53AM
16 field office in that respect.

17 Q Okay, but the plans are for Oklahoma?

18 A They are not for us. They are for NRCS and
19 the producer.

20 Q Okay. The plans are for NRCS and the 11:54AM
21 producer, the poultry producer?

22 A Yes.

23 Q Okay. In satisfaction of Oklahoma law,
24 whether it be the CAFO law or the Registered Poultry
25 Feeding Act; is that correct? 11:54AM

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1 A That wouldn't be the only reason that they
2 might obtain a plan.

3 Q Okay. There would be people out there that
4 have an animal waste management plan that aren't
5 subject to those two state laws? 11:54AM

6 A Yes.

7 Q Okay, and who would those people be?

8 A NRCS for many of their cost share programs,
9 for many of their relative programs would require
10 you to have a plan to be able to take part in those 11:54AM
11 programs.

12 Q Okay.

13 A And that could be any producer that takes part
14 in those programs.

15 Q Okay, and those could be anywhere statewide? 11:54AM

16 A Yes.

17 Q Okay. Apart from this grant program, is there
18 any other relationship between ODAFF and a federal
19 agency regarding land application of litter?

20 A Not to my knowledge. 11:55AM

21 Q And I guess my question -- and maybe we can
22 narrow it down. Does ODAFF have any responsibility
23 under any of the federal environmental laws?

24 A ODAFF in general?

25 Q ODAFF. 11:55AM

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1 A We have a lot of responsibility in the
2 pesticides area.

3 Q Okay. Any responsibility under CERCLA?

4 A Not specifically.

5 Q Okay. Anything under RCRA? 11:55AM

6 A Not specifically.

7 Q Anything under The Clean Water Act?

8 A We don't have the regulatory authority but
9 other than through the MOU assisting EPA.

10 Q Okay, and that would be under The Clean Water 11:55AM
11 Act?

12 A Yes.

13 Q What is ODAFF's responsibility for
14 implementing and enforcing water quality standards?

15 A Each state agency is required to implement 11:56AM
16 water quality standards in their environmental areas
17 of -- in their environmental areas -- in their areas
18 of environmental jurisdiction.

19 Q Okay, and what does it mean to implement the
20 water quality standards within their jurisdictional 11:56AM
21 areas?

22 A Can you refer to the -- I think I have a copy
23 of our plan.

24 Q Okay. What plan is that?

25 A The water quality standards implementation 11:56AM

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1 plan.

2 Q Okay. We'll get into that later. But that is
3 your plan; that's what you used to implement the
4 water quality standards is the water quality
5 standards implementation plan? 11:57AM

6 A Yes.

7 Q Okay. How does ODAFF enforce the water
8 quality standards within its jurisdictional area?

9 MR. LENNINGTON: Object to the form.

10 Q Let me -- you may have this. This may be 11:57AM
11 something you brought with you. I hand you what's
12 marked as Exhibit 2 to your deposition. Have you
13 seen this document before?

14 A Yes.

15 Q Okay. It's my understanding that this is an 11:57AM
16 Attorney General Opinion that was requested by
17 Secretary of the Environment Brian Griffin and Ed
18 Fite of the Scenic Rivers Commission. Actually I
19 think their requests are attached to the back of
20 this opinion. If you'll turn to Page 2 of this 11:58AM
21 opinion -- well, first, do you know what the subject
22 matter of this opinion was?

23 A Yes.

24 Q And what was it?

25 A It was questioned whether or not the agency, 11:58AM

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1 pursuant to its general environmental authority over
2 point and non-point source, could promulgate rules
3 without an absolute statutory mandate to do so at
4 that time.

5 Q Okay. So this would be before the enactment
6 of the CAFO act or Registered Poultry Operations
7 Feeding Act?

11:59AM

8 A The CAFO Act was already in existence at this
9 time, but specifically the question says including
10 waste from operations that are not considered
11 concentrated animal feeding operations by Oklahoma
12 statute.

11:59AM

13 Q Okay, and what was the Attorney General's
14 opinion with regard to this question?

15 A Their opinion, we had jurisdiction over all
16 aspect of the management and disposal of waste from
17 the animal industry, including the environmental and
18 aesthetics impact of such wastes on the air, land or
19 waters of the state. The state board has authority
20 to promulgate rules to regulate animal waste from
21 operations governed by the CAFO Act. In

11:59AM

22 promulgating such rules, the board must utilize
23 state water quality standards. The state board of
24 agriculture has the authority to promulgate rules to
25 enforce state water quality standards for all areas

11:59AM

12:00PM

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1 within its jurisdiction. This includes animal waste
2 from animal feeding operations, regardless of
3 whether such operations are subject to the CAFO Act.

4 State board of agriculture has the authority to

5 initiate civil and criminal actions to enforce

12:00PM

6 compliance with the CAFO Act. In addition, it can

7 initiate actions for administrative penalties for

8 violations of any of its regulations. The board has

9 also general authority to seek injunctive relief to

10 obtain compliance with state water quality standards

12:00PM

11 or with the regulations issued to achieve such

12 standards.

13 Q And just for the Record, where -- you were
14 reading that?

15 A Yes. I'm reading that from Page 7 of the
16 opinion.

12:00PM

17 Q Okay.

18 A Where it leads off -- there's enumerated items
19 at the bottom of that page and at the beginning of
20 the next page, the official opinion of the Attorney
21 General.

12:00PM

22 Q Can you turn to Page 4 of the Opinion H? The
23 second paragraph under this Section A, CAFO Act, if
24 you go about halfway down in that second paragraph
25 starting similarly, it says similarly, a poultry

12:01PM

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1 facility, the dry litter operations of which, would
2 not ordinarily make it subject to regulation under
3 the Act could be treated as a CAFO based on the
4 board's determination that manure from the facility
5 was causing high levels of algae growth in nearby
6 streams. Do you agree that that's something ODAFF
7 had jurisdiction over prior to the enactment of the
8 Registered Poultry Feeding Operations Act?

12:01PM

9 MR. LENNINGTON: Object to the form.
10 You're asking her has the State -- whether she
11 agrees with the official opinion of the Attorney
12 General of the State of Oklahoma?

12:02PM

13 MR. HIXON: Yes.

14 MR. LENNINGTON: Okay.

15 A We're bound by the official opinion of the
16 Attorney General. Each state agency is.

12:02PM

17 Q Okay. So ODAFF had the ability to regulate
18 dry litter operations before the enactment of the
19 Registered Poultry Feeding Operations Act?

20 A The provision referenced is the provision of
21 the CAFO Act that allows the board to designate any
22 operation that meets specific criteria in that as a
23 CAFO.

12:02PM

24 Q Okay, and what does that provision contain
25 that would allow ODAFF to designate a poultry

12:02PM

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1 facility a CAFO?

2 A The current version?

3 Q Current version or the version that was in
4 place at this point. Do you know if that's changed?

5 A I don't think it's changed. So which one do 12:03PM
6 you want?

7 Q If it hasn't changed, then whatever is easiest
8 for you to refer to.

9 MR. LENNINGTON: Just for sake of clarity,
10 could you restate the question that you're posing 12:03PM
11 right now? I'm not sure I understand it.

12 MR. HIXON: I'm asking whether it's
13 possible to regulate a dry litter operation under
14 the CAFO Act prior to the enactment of the
15 Registered Poultry Feeding Operations Act. 12:03PM

16 Q Have you found that provision?

17 A Yes.

18 Q Okay, and what does that provision provide?

19 A It's Title 2, Section 20-44C1. It provides
20 that the state board may make a case-by-case 12:04PM
21 designation of concentrated animal feeding
22 operations pursuant to this section. Any animal
23 feeding operation may be designated as a
24 concentrated animal feeding operation if it is
25 determined to be a significant contributor of 12:04PM

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1 pollution to the waters of the state. In making the
2 designation, the board shall consider the following
3 factors: The size of the feeding operation and
4 amount of waste reaching waters of the state, the
5 location of the feeding operation relative to waters
6 of the state, the means of conveyance of animal
7 waste and wastewaters into waters of the state, the
8 method of disposal for animal waste and processed
9 wastewater disposal, the slope, vegetation, rainfall
10 and other factors affecting the likelihood or
11 frequency of discharge of animal waste and processed
12 wastewaters into waters of the state and other such
13 factors relative to the significance of the
14 pollution problems sought to be regulated.

12:04PM

12:04PM

15 Q Okay and you're reading from 20-44?

12:05PM

16 A Yes.

17 Q And that's the renumbered --

18 A That's the renumbered and split version of the
19 CAFO Act. This is specifically the CAFO Act.

20 Q Okay, and what does all that mean if you could
21 just sum that up? How would ODAFF come to the
22 decision that a poultry facility that's not
23 otherwise subject to CAFO should be designated as a
24 CAFO?

12:05PM

25 A Well, we're not allowed to do that unless

12:05PM

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1 there's been an on-site inspection. It goes on in
2 Subsection 2 of this --

3 Q Okay.

4 A -- to make the determination.

5 Q Okay. 12:05PM

6 A And if we determined, then we have to notify
7 the operation of the determination and an
8 opportunity for the owner or operator to request an
9 administrative hearing on the issue.

10 Q Okay. What would be the occasion for an 12:06PM
11 on-site inspection of a poultry facility prior to
12 enactment of the Registered Poultry Feeding
13 Operations Act?

14 A Complaint driven primarily.

15 Q Okay. Was there any -- at this time before 12:06PM
16 the Registered Poultry Feeding Operations Act went
17 into effect, was there any kind of program to
18 monitor poultry facilities that were not subject to
19 the Act?

20 A Not by the department at that time. 12:06PM

21 Q Okay. By anyone other than ODAFF?

22 A There were water studies going on everywhere
23 but they weren't specifically typically looking up
24 poultry. They were monitoring the health of the
25 river, monitoring the health of Tenkiller Lake. 12:06PM

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1 Q Okay. Did ODAFF use those studies to identify
2 potential contributors to the degradation of water
3 quality?

4 A That information was typically not that
5 specific. 12:07PM

6 Q Okay. Do you know of any poultry operations
7 in the Illinois River watershed that have been
8 subject to this provision, this 9-202, or the
9 current version?

10 A Not that I'm aware of. 12:07PM

11 Q Okay, and that's time immemorial from the
12 enactment of the CAFO Act to the present time?

13 A I made inquiries of people that have been
14 involved with the program over the years, and no one
15 could remember one. 12:07PM

16 Q Okay. So there's not ever been a poultry
17 operation in the Illinois River watershed not
18 subject to the CAFO Act that's been designated as a
19 CAFO?

20 MR. LENNINGTON: Objection, asked and
21 answered. 12:07PM

22 A Based on my interviews of everyone that would
23 have known that.

24 Q Okay.

25 MR. HAMMONS: Philip, it's 12:05. 12:08PM

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1 MR. HIXON: You want to break? That's
2 fine. I'm fine if you want to break.

3 A It's up to you all.

4 MR. HIXON: Let's break for lunch.

5 VIDEOGRAPHER: We are now off the Record. 12:08PM

6 The time is 12:08 p.m.

7 (Following a lunch recess at 12:08
8 p.m., proceedings continued on the Record at 1:16
9 p.m.)

10 VIDEOGRAPHER: We are back on the Record. 01:16PM

11 The time is 1:18 p.m.

12 Q Before we broke for lunch, we were talking
13 about this Attorney General Opinion. Turn to Page
14 7. I think before lunch I'd asked a question
15 regarding enforcement of water quality standards and 01:18PM
16 that was the reason we pulled out this exhibit.
17 Just read that first sentence, first couple of
18 sentences into the Record, if you would, that first
19 full paragraph on Page 7.

20 A Beginning with in addition? 01:18PM

21 Q In addition, yes.

22 A In addition to its authority to enforce the
23 provisions of the CAFO Act, the department has the
24 power to enforce water quality standards in court.
25 The Oklahoma water quality standards contain 01:19PM

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1 numerous specific mandates regarding water quality,
2 and the Environmental Quality Act charges the
3 department with enforcing these standards.

4 Q Okay. The department that's being referred to
5 here is ODAFF; is that correct? 01:19PM

6 A Yes.

7 Q Okay. So this Attorney General Opinion is
8 saying that ODAFF has the authority to enforce water
9 quality standards?

10 A Yes. 01:19PM

11 Q Okay. What's the enforcement mechanism to
12 enforce water quality standards that the Attorney
13 General is referring to here?

14 A I'm not sure I'm following what you're looking
15 for, what you want. 01:19PM

16 Q This says ODAFF can enforce water quality
17 standards. How does ODAFF do that or how did ODAFF
18 do that at this point in time in 1997 or 1998?

19 MR. LENNINGTON: I should probably
20 generally place in the Record an objection with 01:20PM
21 regard to what this document says and the
22 interpretation of this document because I believe
23 that the document speaks for itself. I'll just put
24 that on the Record.

25 MR. HIXON: I'm not asking her to interpret 01:20PM

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1 the document. I'm just asking what this means and
2 how these water quality standards are enforced.

3 A The major portion is the utilization and
4 enforcement of Oklahoma water quality standards and
5 implementation documents that's listed in Title 27A, 01:20PM
6 1-3-101, Subsection D1H.

7 Q Okay. What does that provide?

8 A That is the general jurisdictional areas of
9 environmental responsibility for state agencies.

10 Q Okay, and that would allow ODAFF to enforce 01:21PM
11 water quality standards in court?

12 A Utilization and enforcement of Oklahoma water
13 quality standards.

14 Q Okay. Do you know if ODAFF has ever sought
15 the enforcement of water quality standards against a 01:21PM
16 poultry facility?

17 A Other than the proceedings in this lawsuit?

18 Q Other than the proceedings in this lawsuit.

19 A The -- in court or administrative court?
20 There's a distinction. 01:21PM

21 Q I don't know. This is says the department has
22 the power to enforce water quality standards in
23 court.

24 A I don't recall any district court actions
25 where we, as the agency bringing a case, brought 01:22PM

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1 that particular cause of action. I know that on
2 occasion in some of our older enforcement actions,
3 that may have been one of the listed violations. I
4 can't think of one specifically right now.

5 Q Okay. 01:22PM

6 A But that would be an administrative action
7 before the board of agriculture and an ALJ.

8 Q Do you know at the time of this opinion -- I
9 think the opinion on Page 5, the second full

10 paragraph beginning the board. The board and the 01:23PM

11 Department of Agriculture have the analogous
12 authority and duty to utilize the state water
13 quality standards in establishing rules and issuing
14 permits pursuant to the statutes they administer,

15 and then it talks about the CAFO Act. Did the 01:23PM

16 Department of Agriculture have any rules, apart from
17 the CAFO rules, at this time that governed the land
18 application of poultry litter?

19 A We were working on a set of rules at this
20 time. 01:23PM

21 Q Okay. Tell me about that. What was being
22 worked on at this time?

23 A In December of 1997 the board approved a set
24 of emergency rules known as the commercial poultry
25 operations. They were in Title 35 of the Oklahoma 01:24PM

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1 Administrative Code, Chapter 17, Subchapter 5.

2 Q Okay.

3 A And they were approved and signed by the
4 governor December 19th of 1997.

5 Q Okay. Were those rules developed about the 01:24PM
6 same time as the Keating task force was in session?

7 A It was during the time.

8 Q During the time?

9 A Yes.

10 Q What was the -- why were these emergency rules 01:24PM
11 promulgated?

12 A They were promulgated at that time. We had
13 this existing request to the AG's Office at that
14 time, and we had reviewed the law ourselves and felt
15 like, okay, maybe we can go ahead and do a set 01:25PM
16 without a statutory framework.

17 Q Okay.

18 A And so we began the process, and then this
19 opinion came out on February 27th of '98, so it kind
20 of ratified what we had already done. 01:25PM

21 Q Okay. When you refer to the request to the
22 AG's Office, is that a request for this opinion?

23 A Yes, Secretary Brian Griffin's request.

24 Q Okay. So you began promulgating the rules
25 before this opinion? 01:25PM

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1 A Before this was issued. They were effective
2 on December 19th of 1997.

3 Q Okay.

4 A And that was about two months before this
5 coming out.

01:25PM

6 Q Okay. We'll come back to those. When did
7 Oklahoma become aware of water quality issues
8 related to poultry litter?

9 A There are numerous publications that point
10 that out. I don't know how far back, but the ones
11 that I've reviewed were in the early '90s. There's
12 a well defined body of work discussing those issues,
13 and they are relying on some documents that would
14 have existed previously to that.

01:26PM

15 Q Okay. What is this body of work that you're
16 referring to?

01:26PM

17 A The ones that we referred to earlier, the
18 historical documents.

19 Q Okay. The reports that you brought with you
20 today?

01:27PM

21 A Right.

22 Q Okay, and that's the earliest that you're
23 aware of that Oklahoma had a concern with poultry
24 litter?

25 A No, I didn't say that. I said that there's a

01:27PM

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1 good body of work in the early to mid '90s that in
2 many cases, when you review these, rely on documents
3 that existed long prior to that if you look at the
4 sources, and I don't have many of their source
5 documents, but I've got that they were clearly 01:27PM
6 relying on earlier documents in many cases.

7 Q Okay. Did the State of Oklahoma have
8 knowledge of the source documents?

9 A The State of Oklahoma wrote a lot of these
10 early reports, so, yes, they did. 01:27PM

11 Q Okay. Are the source documents identified in
12 those reports?

13 A Several of them do. This is a '97 report that
14 relies on '96 documents, amongst others. There's
15 numerous technical references. 01:28PM

16 Q I'll hand you what's been marked as Exhibit 3,
17 which is a collection of documents. The first of
18 these appears to be a press release regarding the
19 Illinois River task force. Do you know what the
20 Illinois River task force is? 01:28PM

21 A I remember some folks telling me about it.

22 Q Okay. What was -- what were you told about
23 the Illinois River task force?

24 A Just that there had been earlier Illinois
25 River task forces prior to me coming to the agency, 01:29PM

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1 which was -- so that was more just people mentioning
2 it.

3 Q Okay. Do you know what the purpose of the
4 Illinois River watershed task force was?

5 A It says in this first document, Governor David 01:29PM
6 Walters reactivated the task force in June to
7 continue in the protection and preservation of the
8 free flowing streams of Oklahoma's most scenic
9 river.

10 Q Okay. Do you know anything apart from what it 01:29PM
11 says in the press release?

12 A I've not seen these documents before.

13 Q Do you know when this task force was formed?

14 A This date is from early '92 but, no, I don't
15 know an original date. 01:30PM

16 Q Okay. Would it help if you -- let's see.
17 Second sentence of the press release, the task force
18 was originally created under Governor Nigh's
19 administration to coordinate monitoring and
20 pollution control activities relating to the 01:30PM
21 Illinois River and Tenkiller. Does that help you
22 with regard to when this task force was first
23 formed?

24 A I didn't live in Oklahoma, so I don't have a
25 good clear history of governor terms. 01:30PM

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1 Q Okay. Would you have any reason to dispute it
2 if I told you Governor Nigh was in office from '79
3 to '87?

4 A I have no basis to dispute it.

5 Q Do you have -- does that help you date when 01:30PM
6 this task force was formed?

7 A Yes, sir.

8 Q It does?

9 A Yes.

10 Q Okay. When was it formed? 01:31PM

11 A Sometime during the late '70s to early '80s it
12 sounds like.

13 Q Okay, and you're basing that on my
14 representation?

15 A Yes. 01:31PM

16 Q Okay. Do you know anything about this task
17 force?

18 A I don't. It doesn't ring a bell with me right
19 now.

20 Q Okay. Did you discuss this task force with 01:31PM
21 any of the people that you spoke with in preparation
22 of this deposition?

23 A I don't remember it coming up, no.

24 Q Okay. Do you know the members of this task
25 force, who they were without looking through this 01:31PM

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1 document?

2 A Without looking through the document?

3 Q Uh-huh.

4 A There are a number of people that are listed

5 on the front page, but I do not know the actual 01:31PM

6 membership or what it was made up of.

7 Q Okay, and you do know what work they did?

8 A Short of reading it?

9 Q Short of reading it.

10 A No. 01:32PM

11 Q Do you know whether they made any

12 recommendations to the governor or to the

13 legislature?

14 A I think I already said I don't know this.

15 Q That will move us right along then. Do you 01:32PM

16 know who Robert Miller is?

17 A No. I don't know that name offhand.

18 Q If you turn on this Exhibit 3, there's some

19 minutes from January 22nd, 1992.

20 A January 23rd? 01:33PM

21 Q It's this page. At the bottom it's dated or

22 numbered OSE 0231742.

23 A What page in the packet?

24 Q At the bottom there's a Bates number.

25 MR. LENNINGTON: It says 1742 at the bottom 01:33PM

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1 far right.

2 A Oh, okay.

3 Q Okay. Down under agenda Item No. 1, members
4 present, it identifies Robert Miller, Oklahoma State
5 Department of Agriculture. Does that refresh -- do 01:33PM
6 you know who he is now?

7 A No, I still don't know who that individual is.

8 Q If you go down to just a couple of names below
9 Mr. Miller, Jerry Barker, do you know who Jerry
10 Barker is? 01:34PM

11 A Yes.

12 Q Who is Jerry Barker?

13 A He's the individual I mentioned earlier that
14 worked with the consumer protection division and the
15 CAFO program during these years. 01:34PM

16 Q Okay. If you look back at the page, the Bates
17 number is 1095, which is part of the minutes from a
18 June 4th, 1993 meeting of the task force. This
19 agenda Item No. 5, update regarding plans for
20 confined animal feeding operations permitting, if 01:35PM
21 you go down to the last paragraph and that sentence,
22 does Mr. Hoppers -- do you know who Mr. Hoppers is?

23 A No.

24 Q The first page of this minutes has Richard
25 Hoppers, EPA Region 6. Does that help you? 01:35PM

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1 A I've never worked with a Mr. Hoppers or Region
2 6.

3 Q Okay. The sentence states, Mr. Hoppers
4 responded that if it is impairing a use, EPA or
5 State can take enforcement action, and this is 01:36PM
6 referring to point source discharge or a non-point
7 source discharge in the preceding paragraph; do you
8 see that?

9 A Yes, I do see that.

10 Q Do you agree with that statement that the 01:36PM
11 State of Oklahoma could take an enforcement action
12 for a non-point or point source discharge at this
13 point, which was June 4th of 1993?

14 A We were bound by water quality standards by
15 that time, so we would have been able to and the 01:36PM
16 board does have enforcement authority.

17 Q Okay. So that would be enforcement of water
18 quality standards?

19 A Water quality standards or the CAFO standards
20 or whatever is related to that. 01:37PM

21 Q Okay, and those are the same water quality
22 standard we just discussed?

23 A Well, they're not the same standards that they
24 were then. They have evolved.

25 Q They've evolved, but the same general body 01:37PM

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1 of --

2 A Same concept.

3 Q Okay. Turn to Page 1140, which is part of the

4 minutes from an August 14th, 1992 meeting. Agenda

5 Item No. 7 report on the governor's

01:38PM

6 Arkansas-Oklahoma joint environmental task force

7 activities. Do you know what the Arkansas-Oklahoma

8 joint environmental task force was?

9 A Is it different from the compact commission?

10 Q I don't know. I'm asking you.

01:38PM

11 A I've not heard of anything in that term, using

12 those terms.

13 Q Okay. I'll hand you what is marked as Exhibit

14 4 to the deposition. This is a 1992 report of

15 annual recommendations of the Arkansas-Oklahoma

01:39PM

16 environmental task force. Does this help you

17 identify the task force that's being referred to in

18 this agenda Item No. 7?

19 MR. LENNINGTON: Objection. I think the

20 questions concerning these task forces are outside

01:39PM

21 of the deposition notice.

22 MR. HIXON: We're talking about the history

23 of poultry regulations, and I believe this falls

24 squarely within the history of the poultry

25 regulations.

01:39PM

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1 MR. LENNINGTON: Well, I disagree.

2 Q Does this help you identify who the task force
3 is?

4 A I mean, I can read it, but it's not something
5 I've seen before. 01:39PM

6 Q Okay. If you go back to Exhibit No. 3 that's
7 Page 1140 --

8 A Yes.

9 Q -- the second paragraph, Mr. Fite stated that
10 an earlier presentation on the joint task force had 01:40PM
11 indicated that one of the main goals of the task
12 force was to adopt uniform regulations on animal
13 waste. Do you know whether Oklahoma and Arkansas
14 ever developed any uniform regulations on animal
15 waste either -- 01:40PM

16 A In '92?

17 Q In '92 or since.

18 A The only joint things that I know of between
19 Arkansas and Oklahoma were during the Eucha-Spavinaw
20 litigation and various issues related to that, when 01:40PM
21 they -- when NRCS developed a joint standard, OSRA
22 standard for the entirety of the Eucha-Spavinaw
23 watershed, that included Arkansas and Oklahoma
24 facilities.

25 Q Okay. Is that the only incident you're aware 01:41PM

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1 of where there's been a joint effort to develop
2 regulations?

3 A Well, there have been joint efforts for a long
4 time on various issues but to actually -- we
5 actually came up with uniform regulations across the
6 borders. That's the only thing I know that was ever
7 documented that we did something and actually
8 utilized it between them.

01:41PM

9 Q Okay. We need to change the tapes.

10 VIDEOGRAPHER: We are now off the Record.
11 The time is 1:41 p.m.

01:41PM

12 (Following a short recess at 1:41 p.m.,
13 proceedings continued on the Record at 1:56 p.m.)

14 VIDEOGRAPHER: We are back on the Record.
15 The time is 1:56 p.m.

01:56PM

16 Q Miss Gunter, one last question or series of
17 questions on this Exhibit 3. If you flip back to
18 Page 1469, which is towards the end, it's part of a
19 report to the governor of the State of Oklahoma for
20 the Oklahoma Illinois River task force regarding
21 1993 activities, the last paragraph on that page
22 under the Heading 4, intensify efforts in addressing
23 non-point source pollution, makes reference to
24 increased funding of BMP implementation for
25 non-point sources. Do you know what non-point -- or

01:56PM

01:57PM

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1 BMPs were in place at 1993 that would have been
2 funded by the State of Oklahoma?

3 A Okay. You just changed the question
4 midstream. Do I know what BMPs --

5 Q Were in place in 1993 at the time? 01:57PM

6 A That were funded?

7 Q That were funded by the State of Oklahoma. If
8 this is -- if this is not referring to the State of
9 Oklahoma funding these, do you know who was funding
10 them? 01:57PM

11 A Well, I mean, I know what the statutory
12 controls would have been, those that are in the Feed
13 Yards Act and also in the -- the US EPA also had a
14 CAFO general permit, and it came out in about 1993.

15 Now, the funding of BMP implementation, I 01:58PM
16 don't know this funding precisely. There's been BMP
17 implementation throughout many of the 319 Projects
18 and such, through the non-point source program at
19 the Oklahoma Conservation Commission.

20 Q Okay. Do you know what these BMPs were, the 01:58PM
21 BMPs themselves?

22 A These specific ones that relate to the
23 funding?

24 Q That they're referring to in this report.

25 A I don't know precisely. We would have the 01:58PM

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1 statutory framework, but if there were any
2 additional BMPs in order to get the funding that
3 were part of the program, I don't know that. I've
4 not seen any documents related to that.

5 Q Okay, and these BMPs would be identified in 01:58PM
6 the Feed Yards Act; was that correct?

7 A Those would be statutorily required, yes.

8 Q Okay, and we didn't have -- you don't have a
9 copy of that?

10 A The Feed Yards Act? 01:58PM

11 Q Correct.

12 A I didn't find my old Feed Yards Act. I
13 thought I had it in my stack but --

14 Q Okay. Flip back to this Exhibit 4, Page 1250,
15 the first paragraph under the potential long-term 01:59PM
16 solutions to shared environmental problems heading
17 there, can you read the first paragraph into the
18 Record.

19 A The whole paragraph?

20 Q Yes, please. 01:59PM

21 A In the limited time that task -- in the
22 limited time that task force has had opportunity to
23 meet, one potential long-term solution has been
24 identified to address the concern about variation in
25 standards for interstate streams. That solution 01:59PM

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1 would involve the mutual development of TMDLs for
2 particular streams identified by the task force.
3 Joint implementation of TMDLs for interstate streams
4 would give each state the flexibility to determine
5 which kind of activity must bear what costs to meet 02:00PM
6 its standards. Additional meetings of officials
7 from the state agencies responsible for adopting
8 water quality standards will be necessary to further
9 develop the solution.

10 Q Do you know whether there's ever been a joint 02:00PM
11 TMDL developed between Oklahoma and Arkansas for any
12 interstate watershed?

13 A I don't know of one.

14 Q Okay. Do you know if there's one been
15 developed for the Illinois River watershed? 02:00PM

16 A I don't know of one.

17 Q Flip back to 1249. You can read this first
18 paragraph under the common areas of environmental
19 concern down through the last bullet point.

20 A One of the primary missions given to the task 02:01PM
21 force was to identify common areas of environmental
22 concern. Our review shows that water quality and
23 water quality-related issues are predominant among
24 the current environmental concerns common to both
25 states. Within the water quality sphere of issues, 02:01PM

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1 the following have been addressed to some degree by
2 the task force: Non-point source pollution, water
3 quality standards, agribusiness waste regulation,
4 total maximum daily load, TMDL, implementation,
5 varying standards and economic development
6 advantages.

02:01PM

7 Q Okay. Would you agree that these were
8 concerns of the State of Oklahoma at the time this
9 1992 report was written?

10 MR. LENNINGTON: Object to the form, vague.

02:01PM

11 A I would agree that it's written in this
12 document as one of the apparent concerns but --

13 Q Okay. Would you have any reason to believe
14 that these were not concerns of the State of
15 Oklahoma and State of Arkansas in 1992?

02:02PM

16 A No, I would not.

17 Q Do you know if any actions have been taken on
18 any of these five areas listed in these bullet
19 points with the State of Arkansas since this 1992
20 report?

02:02PM

21 A With the State of Arkansas?

22 Q Yes.

23 A I can't testify to what Arkansas has done
24 related to these.

25 Q Okay. Well, this is a joint task force. Has

02:02PM

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1 any joint efforts been undertaken with Arkansas on
2 these issues since this 1992 report?

3 A I know there were conversations with Arkansas
4 over the phosphorus standard that was placed that is
5 zero point -- 02:03PM

6 Q The .3?

7 A .037 standard for scenic rivers. That would
8 relate to the bullet item of water quality
9 standards. There were discussions regarding
10 implementation, et cetera, of that. 02:03PM

11 Q Okay.

12 A There were also various lawsuits between
13 Arkansas and Oklahoma over the years prior to this
14 that dealt with water quality standards, primarily I
15 think in relationship to the Fayetteville 02:03PM
16 discharges.

17 Q Okay. The lawsuits probably wouldn't be joint
18 cooperative efforts, though, would they?

19 A Not necessarily.

20 Q Do you know when the conversations began on 02:03PM
21 the .037 phosphorus?

22 A Do I know -- I'm sorry?

23 Q When the conversations began with Arkansas on
24 the .037 standard?

25 A The standard I think has been in place for 02:04PM

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1 about four years I think. I don't have that date
2 with me. The discussions took place both during the
3 role making time period. This was the Oklahoma
4 Water Resources Board rule making.

5 Q Okay. 02:04PM

6 A During the rule making, there were various
7 meetings held between Arkansas and Oklahoma entities
8 to discuss implementation and such of that standard,
9 and some occurred prior to the adoption of the
10 standard and some, excuse me, occurred after the 02:04PM
11 adoption of the standard.

12 Q I hand you what's been marked as Exhibit 5 to
13 your deposition, and this is another collection of
14 documents pertaining to Governor Keating's task
15 force. Do you know when Governor Keating's task 02:05PM
16 force was formed?

17 A It was formed in the early part of 1997, I
18 believe, pursuant to an executive order by Governor
19 Keating.

20 Q Okay. Do you know how long the task force was 02:05PM
21 in existence?

22 A It technically was in existence through the
23 end of the legislative session in 1998; however,
24 they did not hold any meetings until -- past
25 December of '97 when they issued their final report. 02:06PM

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1 Q Okay. Do you know why the task force was
2 formed?

3 A Do you have the whole document?

4 Q These are just assorted documents, and the
5 final report is attached to the back.

02:06PM

6 A Oh, here's the result. And what was your
7 question?

8 Q Why was the task force formed?

9 A The executive summary of the water quality
10 protection task force met from June to December '97
11 to develop recommendations for Governor Keating to
12 ensure the protection of Oklahoma's water supply
13 from the state's burgeoning confined animal
14 production industry.

02:06PM

15 Q Okay. Do you know how the work from this task
16 force differed from the Illinois River task force
17 that we discussed earlier that was formed by
18 Governor Nigh?

02:06PM

19 A I don't know that much about the old one other
20 than what you've just shown me on there. This one,
21 its scope was very, very specific to animal waste
22 and water quality protection related to animal
23 waste-type issues primarily.

02:07PM

24 Q Okay. Do you know if this task force
25 considered any of the work that was done by the

02:07PM

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1 prior Illinois River task force?

2 A Not that I know of, but that -- I joined the
3 department in July of '97, and they had already met
4 several times before I joined the department.

5 Q So are you familiar with the recommendations 02:07PM
6 that this task force made to Governor Keating?

7 A Yes.

8 Q Let's look at some of those. If you turn to
9 Page 6 I think of the final report, the
10 recommendations begin there. That first 02:08PM
11 recommendation under public participation, do you
12 know whether this recommendation was adopted by any
13 legislative body or administrative agency in
14 Oklahoma?

15 A The main answer is, no, it was not put into 02:08PM
16 statute to do that.

17 Q Okay, and do you know why it wasn't put into
18 statute?

19 A Oh, no, I don't know why. That would be up to
20 the legislature. 02:08PM

21 Q Okay. Would ODAFF have the authority to adopt
22 this recommendation for its rules and regulations?

23 A No. This would require us to -- that would
24 require us to over-- regulate over a statute, and we
25 don't have that authority. 02:09PM

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1 Q Okay. Operator certification, No. 1 down
2 towards the bottom of the page, do you know if this
3 was adopted by any legislative or administrative
4 agency?

5 A Yes. 02:09PM

6 Q Okay, and when was it adopted?

7 A Well, by operator certification, the swine
8 facility operators at the large swine facilities,
9 licensed managed feedings operations, anyone who
10 handles animal waste is required to be educated on 02:09PM
11 the handling, and nine hours the first year and
12 three hours each year thereafter, and in the poultry
13 -- the Registered Poultry Feedings Operations Act as
14 well as the applicator's requirement, it's a similar
15 requirement that they're required to get nine hours 02:10PM
16 of education regarding poultry waste handling and
17 three hours of update training after that.

18 Q Okay. Who provides that poultry waste
19 training?

20 A The poultry waste training is provided by the 02:10PM
21 Oklahoma Cooperative Extension Service with
22 consultation with the department.

23 Q Okay. Recommendation 2 under the
24 administrative procedures, which is on Page 7, this
25 is recommending the fee on animals. Do you know if 02:10PM

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1 this recommendation was adopted by the legislature
2 of any administrative body?

3 A Partially.

4 Q Partially. Who was it adopted by?

5 A Our -- the statutory requirements for licensed 02:11PM
6 managed feeding operations requires them to pay 80
7 cents per animal unit licensed for those facilities.

8 Q Okay. You've mentioned licensed management
9 feeding operations several times. What is that?

10 A That is essentially large swine operations. A 02:11PM
11 licensed managed feed operation is defined by the
12 statute.

13 Q Okay. Was this recommendation adopted for
14 poultry at all?

15 A No, it was never adopted. 02:11PM

16 Q Is this something that ODAFF could adopt on
17 its own?

18 A No. These are statutory -- the only fees in
19 the Poultry Act are statutory fees.

20 Q Okay. Further down, No. 6, allow the Oklahoma 02:11PM
21 board of agriculture to set appropriate license fees
22 for animal feeding operations. Was this adopted?

23 A No.

24 Q On Page 8, land application, first
25 recommendation, all soil and animal waste test 02:12PM

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1 results shall be kept on site for as long as the
2 facility is in operation. ODA shall maintain a
3 database of these results as well. Was that
4 adopted?

5 A Partially.

02:12PM

6 Q Okay, and how was it adopted?

7 A CAFO facilities are required to keep -- by
8 CAFO, at that time that also included LMFOs, the
9 licensed managed feeding operations. Anyone

10 licensed was required to keep their records on site

02:12PM

11 for as long as the facility was in operation. That

12 came about in '98, and the -- but -- and then on

13 poultry operations, they keep their records on site

14 for as long as they're in operation. We maintain a

15 database of applicator reports. When the applicator

02:13PM

16 reports are submitted to the agency, we go ahead and

17 type it in to the database and then we maintain

18 copies of the reports as well.

19 Q Okay. Does ODAFF keep any records, maintain

20 any records of the amount of litter removed from an

02:13PM

21 operation, the amount removed from the poultry

22 house?

23 A The amount physically removed? The --

24 sometimes that will be included in our inspection

25 reports, but I don't recall it getting input into

02:13PM

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1 the database. I don't recall that.

2 Q Okay. Turn to Page 9, corporate
3 responsibilities, Recommendation No. 3, at least
4 annual inspections shall be provided by the
5 integrator at all facilities with an animal waste 02:14PM
6 management plan. Inspection shall include a review
7 of the animal waste management plan to determine if
8 it's up to date, a review of litter application
9 records to determine compliance with the animal
10 waste management plan and review of all other 02:14PM
11 records, and it goes on. Do you know if this
12 recommendation was adopted by the legislature?

13 A The first portion was not. The integrators
14 are not required by statute to provide inspections
15 of those facilities. 02:15PM

16 Q Okay. Have the integrators ever been required
17 to perform inspections of the contract poultry
18 growing facilities?

19 A By statute?

20 Q By any applicable law. 02:15PM

21 A Not to my knowledge, no.

22 Q Do you know why this provision wasn't adopted
23 or why this recommendation wasn't adopted by the
24 legislature?

25 A No. 02:15PM

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1 Q Are you aware of any reason that would prevent
2 the legislature from adopting this provision or this
3 recommendation?

4 A Other than the process itself.

5 Q If that's -- 02:15PM

6 A The legislative process is --

7 Q Is that your answer?

8 A I mean, I don't know of any reason why they
9 can't pass any statute that they want to.

10 Q If you turn to Page 12, under land 02:16PM

11 application, this first recommendation, in

12 phosphorus threatened watersheds, an initial soil

13 sample of all fields to receive litter shall be

14 required. A person shall retest annually in all

15 fields testing over 150 pounds of phosphorus and 02:16PM

16 shall retest every three years in all fields testing

17 under 150 pounds of phosphorus. Was this

18 recommendation adopted by the legislature or any

19 administrative body?

20 A Not in that precise manner. 02:16PM

21 Q Okay. How was it adopted?

22 A Instead of discussing phosphorus threatened

23 watersheds, the legislature instead created nutrient

24 limited watersheds and nutrient vulnerable

25 groundwater areas. 02:17PM

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1 Q Okay. What is a nutrient limited watershed?

2 A Nutrient limited watersheds are set by the
3 Oklahoma Water Resources Board through their water
4 quality standards program, and they identify
5 particular areas or watersheds that are -- are 02:17PM
6 nutrient limited for whatever reason.

7 Q Okay, and what about nutrient vulnerable
8 groundwater; what is that?

9 A They've done -- again, the Oklahoma Water
10 Resources Board has made a determination. They've 02:17PM
11 got a groundwater vulnerability map that they
12 identify as high, very high, moderate vulnerability,
13 low vulnerability for the state, and they've
14 identified that in all nutrient vulnerable
15 groundwater areas where they're very high. They 02:17PM
16 include the high also. I don't recall, but I know
17 it's the very high category, but potentially the
18 next category.

19 Q Okay. Do you know how high and very high is
20 defined? 02:18PM

21 A No, I don't have those definitions with me.

22 Q Okay. Was this 150 pounds of phosphorus, was
23 this ever adopted by the legislature or any
24 administrative body?

25 A That number to my knowledge was not adopted in 02:18PM

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1 statute or rule.

2 Q Okay. Is that something that could be adopted
3 by ODAFF, setting a phosphorus limit for land
4 application of poultry litter?

5 MR. LENNINGTON: Objection, vague. 02:18PM

6 A There's language in the Poultry Feeding
7 Operations Act that gives the department some
8 flexibility in having a different standard for
9 nutrient limited watersheds and nutrient vulnerable
10 groundwaters. 02:19PM

11 Q Okay. What is that language you are referring
12 to?

13 A I'm looking at Title 2, Section 10-9.19,
14 Subsection 3, the State Department of Agriculture
15 may promulgate rules pursuant to the Administrative 02:19PM
16 Procedures Act, which will prohibit the land
17 application of poultry waste in nutrient limited
18 watersheds and nutrient vulnerable groundwaters
19 based on lower soil phosphorus levels that are
20 allowed in this section for non-nutrient limited 02:20PM
21 watersheds and non-nutrient vulnerable groundwaters.

22 Q Okay. So ODAFF couldn't prohibit the land
23 application of poultry litter altogether through its
24 rule making authority; is that what that section
25 means? 02:20PM

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1 A No, that's not what that section means.

2 Q Okay. What does that section mean?

3 A That section means that we can promulgate
4 rules for lower phosphorus standards. In some cases
5 it could result in prohibition of land application 02:20PM
6 but only for nutrient limited watersheds in nutrient
7 limited groundwater areas. We don't have that area
8 in non.

9 Q Okay. Is the Illinois River watershed a
10 nutrient limited watershed? 02:20PM

11 A It is, yes, currently.

12 Q Okay. I hand you what is marked as Exhibit 6.
13 We've touched on some of this. This document is
14 pertaining to the emergency rules that were
15 developed by ODAFF in '97. I asked you earlier 02:22PM
16 about the reason for the emergency rules. Can you
17 tell me whether this first two pages, this
18 resolution from the Water Resource Board, was that
19 something -- was this the reason ODAFF adopted the
20 emergency rules in '97? 02:22PM

21 A These -- this was one of the many documents
22 floating around at that time that contributed to us
23 developing rules.

24 Q Okay. It was among the factors?

25 A It was one, along with the governor's task 02:23PM

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1 force.

2 Q Okay. What was the emergency that existed at
3 the time these rules were promulgated?

4 A Compelling public interest.

5 Q Okay. What was the compelling public 02:23PM
6 interest?

7 A Everyone wanted us to do something. We had
8 significant public input, as well as agency input
9 from the task force, from other agencies, including
10 up some that ended up being members of that task 02:24PM
11 force, as well as general public that wanted us to
12 do some type of a specific scheme for poultry
13 operations in addition to the CAFO portions.

14 Q Okay. As I understand Oklahoma law, and
15 referring to Title 75, Section 253, the emergency 02:24PM
16 rules require some imminent peril or some other
17 extraordinary circumstances. What was the imminent
18 peril or extraordinary circumstances?

19 A Well, compelling public interest is one of --
20 I think there were three standards at that time. 02:24PM

21 Q Okay.

22 A And one of those is compelling public
23 interest. They're not all to be taken together.
24 There are specific reasons. If there's imminent
25 peril, we can do an emergency rule. If there's the 02:25PM

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1 second item you listed, we can do an emergency
2 rules, exclusive of the other two, and then
3 compelling public interest.

4 Q Okay. What was it in 1997 that made these
5 poultry litter issues a compelling public interest
6 issue? 02:25PM

7 A In 1997 it started with the Eucha-Spavinaw
8 issue. There was a Conservation Commission report.

9 The Phase 1 Clean Lakes Project, Diagnostic and

10 Feasibility Study of Lake Eucha and that was by 02:25PM

11 Kevin Wagner and Scott Woodruff with the Oklahoma

12 Conservation Commission, water quality division,

13 issued in February of 1997, and in that report it

14 pointed out that there were -- there was

15 eutrophication, had been caused by elevated nutrient 02:25PM

16 loading from Beatty Creek and Spavinaw Creek to Lake

17 Eucha. It -- it said the phosphorus in Beatty Creek

18 likely originates from non-point source pollution

19 resulting from agricultural practices associated

20 with the poultry industry. Talked about increases 02:26PM

21 dramatically in the poultry industry from '82 to

22 '92, and that that was a good indication of the

23 growth of the poultry industry in the Lake Eucha

24 watershed, and then it kind of got into a

25 description. 02:26PM

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1 At that time that was one of the first times
2 that non-agency people began to get really heavily
3 interested in the problems that could result from
4 overapplication or application of poultry litter,
5 specifically the City of Tulsa, because Lake Eucha 02:26PM
6 is one of their drinking water sources.

7 Q Okay, and 1997 was the first time the City of
8 Tulsa was concerned with its drinking water?

9 A I don't know if that was the first time they
10 were ever concerned, but you asked why in 1997. 02:27PM

11 Q That report --

12 A This was beginning that year, followed by the
13 governor's waste task force that also addressed the
14 poultry issues as a result of some of this, and then
15 on through the fall and into the spring became the 02:27PM
16 statutory frameworks.

17 Q Okay. Generally describe the process that
18 ODAFF used to adopt these rules from first
19 considering the rules through adoption of final
20 rules. 02:27PM

21 A The process, the rule-making process in an
22 emergency rule making is -- there's very little
23 formality in that process. It is a draft of the
24 rules, vet them out to everybody that probably needs
25 to look at them, get them back, and we can take them 02:28PM

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1 to the board. That's different from the permanent
2 rule-making process, which involves much more public
3 access, and emergency rules automatically expire if
4 you don't replace them with permanent rules.

5 Q Do you know who drafted these emergency rules? 02:28PM

6 A The Department of Agriculture.

7 Q Okay. Do you know who within the Department
8 of Agriculture?

9 A Yes.

10 Q Who was that? 02:28PM

11 MR. LENNINGTON: Objection. I think we're
12 going to assert deliberative process privilege here
13 to the extent we're talking about the draft of a
14 rule that the Department of Agriculture is making
15 prior to their decision to adopt the rule. Any 02:28PM
16 questions concerning how that process was put into
17 place is -- falls squarely within the deliberative
18 process privilege.

19 MR. HIXON: How does who drafted the rules
20 fall within the deliberative process? 02:29PM

21 MR. LENNINGTON: She answered that the
22 Department of Agriculture was the entity that
23 drafted the rules. I don't see -- and additionally,
24 whoever drafted the rules is not an issue that's
25 within the scope of the 30(b)(6) notice. 02:29PM

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1 MR. HIXON: It's within the history issue.

2 MR. LENNINGTON: It doesn't say history.

3 It says historical statutes or rules and

4 regulations. It doesn't say who drafted a

5 particular rule or regulation.

02:29PM

6 Q Who drafted the rules within ODAFF?

7 MR. HIXON: If you want to instruct her not

8 to answer, instruct her not to answer.

9 MR. LENNINGTON: I think the simple fact of

10 who drafted the rules, I think that's a question you

02:30PM

11 could answer.

12 A I did.

13 Q You did, okay. Was there any public comment

14 allowed on the emergency rules?

15 A There was no formal public hearing on the

02:30PM

16 emergency rules other than the board approval, which

17 is an open meeting and is deliberative.

18 Q So did ODAFF accept any public comments on the

19 rules?

20 A We received comments on them.

02:31PM

21 Q Okay. Did ODAFF ask for comments or you just

22 received comments?

23 A Well, I mean, if you mean by asking did we

24 publish it in the federal -- The Oklahoma Register,

25 we did not publish the notice of rule-making intent

02:31PM

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1 because they were emergency rules and it's not
2 required.

3 Q Okay.

4 A We did present them, though, to various
5 entities for review.

02:31PM

6 Q Okay, and who were they presented to?

7 A The task force.

8 Q Okay, and that's Governor Keating's task
9 force?

10 A That's right.

02:31PM

11 Q Were a draft of the rules made available to
12 the public?

13 A You mean of the proposed rules?

14 Q Of the proposed rules.

15 A The proposed rules were available to anyone
16 that requested them, and they were obviously
17 proposed until the day they went to the board
18 meeting and they actually acted on them.

02:32PM

19 Q Exhibit 6, if you turn to Page 228, a letter
20 from Scott Dewald to David Chandler. Have you seen
21 this letter?

02:32PM

22 A Oh, here it is.

23 Q 228.

24 A Yes, I'm familiar with this letter.

25 Q Okay. Who is Mr. Chandler?

02:33PM

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1 A He was the director of the water quality
2 division and general counsel of the agency. He may
3 have moved on from director because he was an
4 interim director about this time, about December, so
5 he may have only been general counsel at that time. 02:33PM

6 Q Okay. The second paragraph of Mr. Dewald's
7 letter refers to grandfathering. Do you know what
8 he is referring to there?

9 A This -- he's commenting on a set of rules that
10 we took to the board the same day as the poultry 02:34PM
11 rules. He's commenting specifically on the
12 requirement. We added a new requirement for a
13 building permit, that you had to have a building
14 permit from the agency prior to beginning
15 construction of CAFO, and he was specifically 02:34PM
16 commenting on that rule.

17 Q Okay. He's referring to a CAFO rule then?

18 A Yes. He says on the first sentence there.

19 Q Okay. Flip over to 396. Are you familiar
20 with this letter at all, Page 397? It's written by 02:35PM
21 Carolyn Binam.

22 A I remember we had a number of letters from
23 producers as well as others, and this -- the bold
24 type triggers a memory that I've probably seen this
25 one or the all caps. 02:35PM

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1 Q It's an interesting letter. I'll leave it at
2 that, but the second to the last paragraph --

3 A On the first page?

4 Q -- on the second page, we also feel we are
5 being discriminated against by the commercial 02:35PM
6 fertilizer companies. I feel like the people who
7 are going to put commercial fertilizer on their land
8 should also have a soil test and litter test and
9 have the same rules and regulations that are trying
10 to be imposed on us. Was there any discussion of 02:35PM
11 extending these emergency rules to the use of
12 commercial fertilizer in these various watersheds?

13 A No. These were developed by the water quality
14 services division at that time, and our fertilizer
15 regulations were handled through the consumer 02:36PM
16 protection services division. We were only dealing
17 with that division's authority.

18 Q Okay. Is that the case now?

19 A It's still split between the two divisions,
20 yes. 02:36PM

21 Q Okay. The next page, a letter from Patricia
22 Bragg to yourself and there's some proposed
23 regulations attached. Are you familiar with these?

24 A Yes, I am.

25 Q If you turn to page -- Bates numbered Page 02:37PM

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1 417, under the commercial poultry operations
2 heading, there's various numbers of broilers,
3 breeders, laying hens, pullets, turkeys, ducks,
4 animal units listed. Do you know how those numbers
5 were arrived at? 02:37PM

6 A No.

7 Q Do you know how the numbers that are in the
8 current regulations were arrived at with regard to
9 the number of --

10 A There is no number in the Registered Poultry 02:38PM
11 Feeding Operations Act.

12 Q And there's no number in the current
13 regulation?

14 A There's no -- the -- are you talking about
15 commercial poultry feeding operations, the old 02:38PM
16 regulatory scheme, or are you talking about the
17 statutory scheme that came out in mid 1998?

18 Q Are there numbers in either of those?

19 A I don't know that we -- well, let me just
20 look. Yeah. We did do numbers in the commercial 02:38PM
21 poultry operations.

22 Q Okay, and are those regulations promulgated by
23 ODAFF?

24 A Yes. That's in the emergency rules I referred
25 to earlier. 02:38PM

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1 Q Okay. What's the significance of the numbers
2 that were used in the emergency rules?

3 A It's the same number that's used in the CAFO
4 regulation as a thousand animal units, which is the
5 standard for all species, and then there are animal 02:39PM
6 unit equivalencies that you use to -- for example,
7 the thousand animal units of cattle is a thousand
8 head, and then there is a multiplier for all of the
9 other categories that would be the equivalent of a
10 thousand animal units. 02:39PM

11 Q Okay. Do you know if that's what was used in
12 this commercial poultry operation's definition that
13 is in the Tulsa regulations that are submitted here?

14 A They used a term animal unit, number of
15 poultry multiplied by the appropriate factor. 02:39PM
16 That's on Page 1, 066.2.1 and 1.0, but I can't -- I
17 don't know where they came up with these particular
18 numbers, but they do use similar terminology, the
19 1,000 animal units.

20 Q Okay.

21 A But the broilers and breeders and laying hens,
22 I've not equated that, so --

23 Q Okay. What about ducks?

24 A We don't have any duck CAFOs in the State of
25 Oklahoma, but we're ready if we do. 02:40PM

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1 Q I don't think that one made the cut. Okay.
2 On the next page, 418, at the top there's a
3 definition for litter. Do you know if this
4 definition for litter was incorporated into the
5 final emergency rules? 02:41PM

6 A Well, the note that this was not delivered to
7 us until February of '98. This was a comment on the
8 permanent rule-making process. The emergency rules
9 were already in place by that time.

10 Q Okay. So it would not have been adopted? 02:41PM

11 A So, no. These items in this document were not
12 a part of that rule making. We did not receive them
13 until February when we were doing the rule making to
14 replace those emergency rules with permanent rules.

15 Q Okay. Was the permanent rule making -- was 02:41PM
16 that related to the replacement of the emergency
17 rules or was it only or was it also related to
18 passage of the Registered Poultry Feeding Act?

19 A No. It was only related to the permanent
20 rules. The Poultry Feeding Act didn't pass until 02:41PM
21 May of '98.

22 Q Look back at Page 360.

23 A 360 back did you say?

24 Q Yeah. Just continue back.

25 A Continue back, okay. 360 did you say? 02:42PM

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1 Q Uh-huh.

2 A Oh, there it is. Okay.

3 Q I don't know if this is any significance,

4 except this is faxed to J. D. Strong, you see,

5 December 10th, '97.

02:42PM

6 A Yes.

7 Q Flip to the next page. Looks like a note from

8 Mr. Strong to you dated December 11th attaching

9 comments, and then the rules attached to this also

10 have a fax headed or dated December 10th, 1997.

02:43PM

11 A That's right. I see that.

12 Q Okay. Can we assume these are the rules that

13 were faxed to Mr. Strong?

14 A The proposed rules that were the emergency

15 rules would be the topic of this discussion.

02:43PM

16 Q Okay. On the first page of the rules, under

17 3517-5-2 of the definitions, commercial poultry

18 operation, we have some numbers here and someone has

19 written 500 AU. Are the numbers here the equivalent

20 of 500 animal units; do you know?

02:44PM

21 A I don't know what our multipliers -- this

22 is -- I don't recall the multipliers we were using

23 at that time and where we came up with those

24 figures.

25 Q Okay.

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1 A But this was a draft.

2 Q Okay. This was a draft as of December 10th?

3 A Yes.

4 Q Okay, and these went into or were adopted you

5 said December? 02:44PM

6 A December 17th they went to the board.

7 Q Okay.

8 A And December 19th they were signed by the

9 governor.

10 Q Do you know what changed between this December 02:44PM

11 10th draft and what was adopted by the board?

12 A Without going line by line, no.

13 Q Okay.

14 A I mean, if I went line by line, I could point

15 stuff out but, no, I don't remember stuff 02:45PM

16 specifically from that time period.

17 Q Do you know if there were any substantive

18 changes, what you would define as substantive

19 changes?

20 A Well, I can look at one right now for the 02:45PM

21 provision we're talking about, the commercial

22 poultry definition in this proposed version

23 specifically pointed out broilers, breeders, layers,

24 pullets, turkeys. What was actually approved by the

25 board and the governor is a thousand animal units. 02:45PM

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1 Q Okay. Without any reference to the type
2 of poultry?

3 A Just animal units of poultry was the only term
4 used.

5 Q The following page, still under definitions, 02:46PM
6 there's a definition of litter here. Do you know if
7 that was adopted in the final rule?

8 A Yes, that was the same. When you are saying
9 final rules, I assume we're talking about the
10 emergency rules. 02:46PM

11 Q Right. Talking about the emergency rules.

12 MR. HIXON: You want to take a break? As
13 long as we don't do a half hour break, I'm fine.

14 VIDEOGRAPHER: We are now off the Record
15 the time is 2:47 p.m. 02:47PM

16 (Following a short recess at 2:47 p.m.,
17 proceedings continued on the Record at 3:04 p.m.)

18 VIDEOGRAPHER: We are back on the Record.
19 The time is 3:04 p.m.

20 Q Okay. We were looking at the proposed 03:04PM
21 emergency rules with J. D. Strong's handwriting on
22 it. If you could turn to -- it's Page 6 of the fax,
23 which is the Bates number 622. Look at Section
24 3517-5-8, this inspection provision. It states,
25 inspection shall be conducted at least twice 03:05PM

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1 annually by the integrator at all facilities either
2 contracted or controlled by the integrator. The
3 integrator inspection shall include a review of
4 animal waste management plan to determine if it's up
5 to date, review a litter application record and
6 determine compliance with the animal waste
7 management plan and review of all required records.
8 Was this provision in the rules that were adopted by
9 the board of agriculture?

03:05PM

10 A Yes, it was. I had forgotten that we had that
11 in there.

03:06PM

12 Q Do you know if that provision was in the
13 replacement -- the permanent rules that replaced the
14 emergency rules?

15 A No, it was not.

03:06PM

16 Q Okay. It was not included?

17 A No, not in the final -- well, oh, I've set
18 them over here. I was looking at the wrong set.
19 Sorry. Let me double check. Yes, it's still in
20 there.

03:06PM

21 Q Okay. Do you know how long that was in
22 effect?

23 A Oh, it was in effect until -- these rules
24 didn't expire until essentially the end of session,
25 which would have been the last Friday in May of '98.

03:06PM

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1 These permanent rules were proposed or were approved
2 by the board on March 17th of '98 but it takes
3 several months to get through the legislative
4 process on permanent rules, and so probably the real
5 point when these no longer cease to exist was when
6 the Registered Poultry Feeding Operations Act became
7 effective, which was July 1st, 1998.

03:07PM

8 Q Okay. So the permanent rules that replaced
9 these emergency rules ceased to be effective?

10 A They were still in effect, but the statute
11 trumped anything. Once it became effective, it
12 trumped anything that was in here that didn't agree
13 with them. Let's put it that way.

03:07PM

14 Q Okay. That may have answered the questions
15 that I had. I hand you what's been marked as
16 Exhibit 7, and this is first page of this is --
17 appears to be a fax from Virgil Jurgensmeyer to you.
18 Are you familiar with this document?

03:07PM

19 A It's actually to Virgil from me.

20 Q Oh, it's to Virgil from you. Okay. If you'll
21 look at the attached documents, it appears that
22 this -- did you compose this memo that's on the
23 second page?

03:08PM

24 A It appears so.

25 Q And do you know why you composed this memo?

03:08PM

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1 A It appears that we had a conversation early
2 June of '98 regarding how we had the rules set up
3 initially with integrator inspections, and Senate
4 bill 1170 did not provide for integrator inspections
5 specifically. 03:09PM

6 Q Okay. Who is Randy Wyatt, if you can tell me?

7 A I think he was a lobbyist for the Poultry
8 Federation at that time.

9 Q Okay. Do you know who Mr. Claud Rutherford
10 is? 03:10PM

11 A He was with Simmons.

12 Q Keith Morgan?

13 A A grower.

14 Q Okay. How about Sam Andrews?

15 A Another grower. 03:10PM

16 Q Why were you writing a memo to someone from
17 the Poultry Federation, Simmons and two poultry
18 growers?

19 A Well, from the text of the memo, they had
20 asked me to review Senate Bill 1170 to see if the 03:10PM
21 inspections could continue to be performed by the
22 integrators.

23 Q Okay. Had they suggested that the inspections
24 continue?

25 A Because it says I was asked, I'm going -- I 03:10PM

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1 don't know. I don't know for sure. I don't
2 remember the exact meeting itself.

3 Q Okay. If you flip to the next page, I think
4 this is still part of this fax. Do you know what
5 this form is, this commercial poultry operations 03:10PM
6 inspection checklist?

7 A It appears to be just exactly what it says, a
8 checklist for an inspection for commercial poultry
9 operations.

10 Q Okay. Do you know who used this list; was 03:11PM
11 this the list that the integrators were supposed to
12 use under these emergency rules?

13 A Well, because it refers to commercial poultry
14 operations, I know it had to have been utilized
15 during that time period that they were called that 03:11PM
16 because they weren't called that by 1170, but I
17 don't remember -- I don't specifically remember who
18 used the form or if we provided it. I don't
19 remember it.

20 Q Okay. Continue to flip to the page Bates 03:11PM
21 numbered Page 12. There's another memo to Virgil
22 Jurgensmeyer. Who is Mr. Jurgensmeyer?

23 A He is a producer in -- a mushroom producer in
24 Miami, Oklahoma, and at that time he was a member of
25 the state board of agriculture. 03:12PM

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1 Q Okay. Were you writing to him in his capacity
2 as -- on the state board of agriculture or as a
3 mushroom farmer, if you know?

4 A The letter doesn't have anything to do with
5 mushrooms, but I don't recall the circumstances that 03:12PM
6 brought up me writing this to him.

7 Q Okay. Based on this letter, was it your
8 position that because the Senate Bill 1170 didn't
9 specify integrator inspections, that ODAFF couldn't
10 require integrator inspections? 03:13PM

11 A I don't think that's what it says.

12 Q Okay. What was your understanding?

13 A It just shows that they need -- the department
14 shall make at least one inspection per calendar
15 year, reading the plain language of that. It 03:13PM
16 doesn't say the integrators shall make the
17 inspection. It said the department.

18 Q All right. That was my question. Because
19 there's not any language regarding the integrator
20 inspections in Senate Bill 1170, ODAFF couldn't 03:13PM
21 require the integrators to inspect?

22 A Well --

23 Q If you look at Paragraph 3, the third
24 paragraph on this first page of the Jurgensmeyer
25 memo, go ahead and read that into the Record and 03:14PM

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1 explain to me what you were conveying to Mr.
2 Jurgensmeyer.

3 A Read what? I'm sorry.

4 Q The third paragraph.

5 A The whole third paragraph.

6 Q Beginning in addition to the language.

7 A In addition to the language requiring the
8 department to perform inspections in Senate Bill
9 1170, it is also evident the legislature could have
10 required integrator inspections but chose otherwise. 03:14PM

11 Throughout SB 1170, it is evident that the
12 legislature relied heavily on the board's commercial
13 poultry operations rules in drafting the Act. Many
14 definitions and requirements were taken directly
15 from the board's rules. Conspicuously missing, 03:14PM
16 however, is the language relating to integrator
17 inspections. The legislature used the board's
18 guidance -- rules for guidance in several areas but
19 chose to write new language regarding inspections.

20 This also makes it clear that the legislature 03:15PM
21 considered but rejected the procedure the department
22 proposed for performing regular inspections of
23 poultry facilities. It should be noted that
24 numerous negative comments were received regarding
25 these types of inspections. 03:15PM

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1 Q Okay. The reference to the commercial poultry
2 operations rules, those are the emergency rules that
3 we've been discussing; is that correct?

4 A Right. Just commercial poultry operations.

5 It wasn't registered. 03:15PM

6 Q Okay. The last sentence in that paragraph, it
7 should be noted that numerous negative comments were
8 received regarding these types of inspections, who
9 -- what are you referring to there?

10 A I don't remember what I was referring to 03:15PM

11 specifically there. It may have been that in some
12 of the comments to the rules in the permanent
13 process we may have received some comments on that
14 issue, but I don't recall that specifically.

15 Q Okay. Do you know -- can you quantify 03:16PM

16 numerous negative comments, how many numerous
17 negative comments were there?

18 A I apparently didn't count them.

19 Q Okay. As I understand this sentence, it's
20 referring to negative comments regarding integrator 03:16PM
21 inspections?

22 A Yes.

23 Q Okay. Do you remember who made those
24 comments?

25 A No, not without reviewing that the whole file. 03:16PM

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1 I just -- I don't remember what the comments were
2 specifically on that.

3 Q Okay. Do you know if that rule-making file
4 was made available to the defendants?

5 A Yes, it was. Many of these items came from 03:16PM
6 it.

7 Q Okay. If you turn the page, the second full
8 paragraph, can you read that into the Record and
9 explain what you're --

10 A You talking about the one that starts -- 03:17PM

11 Q Another major issue.

12 A -- another major issue? You want me to read
13 it out loud?

14 Q Sure.

15 A Okay. Another major issue in deeming these 03:17PM
16 individuals to be authorized agents of the board is
17 the liability that could be associated with these
18 inspections. The board is responsible for the acts
19 of its agents. In this suggested instance, however,
20 the board would be liable for the acts of inspectors 03:17PM
21 that it has no control over. The potential
22 liability would be far too great when the board has
23 no control.

24 Q Okay, and we're still here referring to
25 inspections performed by integrators? 03:17PM

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1 A Yes.

2 Q Okay, and what liability was ODAFF concerned
3 with here or potential liability?

4 A Numerous concerns, things like the Tort Claims
5 Act. We didn't -- I mean, the Governmental Tort 03:18PM
6 Claims Act. Our own workers' comp insurance, we
7 didn't want to be covering people out there that we
8 don't have any ability to direct, those types of
9 things, general agency liability claims that would
10 be through those kinds of programs. 03:18PM

11 Q Okay. Let's go back to these emergency rules,
12 J. D. Strong's comments. Still in Section 3517-5-8,
13 Subparagraph D, upon notification, the Oklahoma
14 Department of Agriculture shall inspect the
15 commercial poultry operation and determine if a 03:19PM
16 violation has occurred. Do you know what this star
17 and key explanation point -- what that comment means
18 out to the side of Subparagraph D?

19 A I don't necessarily know what the comment
20 means. I know what the provision meant. 03:19PM

21 Q Okay. What does the provision -- what did it
22 mean?

23 A Well, the provision was there so that we could
24 verify if there was indeed a violation at the
25 facility, not just based on an integrator providing 03:19PM

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1 us with an inspection. We had to go out and
2 actually verify it ourselves as well.

3 Q Okay. The notification, the first phrase of
4 this, upon notification, is that notification coming
5 from this integrator inspection? 03:20PM

6 A Yes. The previous item?

7 Q Uh-huh.

8 A Subsection C, the integrator shall notify and
9 provide a written report to the Oklahoma Department
10 of Agriculture within ten days of inspection. 03:20PM

11 Q Okay. Do you know what Mr. Strong is
12 referring to where he says protect the grower,
13 exclamation point, good, exclamation point?

14 A I don't know what his thought processes were
15 when he provided that. 03:20PM

16 Q Did you discuss his comments with him?

17 A I don't recall.

18 Q Okay. Was any of this Section 17-5-8, was any
19 of this included in the rules -- well, did any of
20 this survive the Registered Poultry Feeding Act? 03:21PM

21 A Any of this provision --

22 Q Any of this provision.

23 A -- get brought over into 1170?

24 Q Yes, or the rules promulgated under 1170.

25 A I don't believe any of this was included in 03:21PM

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1 1170.

2 Q Okay.

3 A And in our emergency rules that were
4 promulgated right after or for the first set for
5 1170, that entire 17-5-8 was stricken.

03:22PM

6 Q Okay. Do you know whether the procedures
7 described in that 17-5-8, were those ever
8 implemented; do you know whether the integrators
9 ever performed any inspections under that section?

10 A I don't remember that at all.

03:22PM

11 Q Okay. Would ODAFF have those records if the
12 integrators had conducted any inspections?

13 A Yes. Anything that would have come into us
14 from the integrator would be in our records.

15 Q Okay. Would those files have been made
16 available in the document production?

03:23PM

17 A All of our poultry files from AEMS were made
18 available.

19 Q Okay. I hand you what I've marked as Exhibit
20 8A, which I believe is the Registered Poultry
21 Feeding Operations Act, and this was actually
22 obtained from the ODAFF website.

03:23PM

23 A Okay.

24 Q And let's see. What's been marked as Exhibit
25 8B, which are the regulations which were obtained

03:23PM

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1 from the ODAFF website, and 8C, which is the poultry
2 waste applicator regulations, which also came from
3 the ODAFF website. Okay. Based on your prior
4 testimony, it's my understanding that this
5 poultry -- Registered Poultry Feeding Act Operation
6 was the first specific poultry legislation that was
7 passed regarding litter?

03:24PM

8 A Statutory.

9 Q Do you know why Oklahoma waited until 1998 to
10 pass legislation related to application of poultry
11 litter?

03:24PM

12 A I don't know why the legislature makes their
13 decisions.

14 Q Okay. Are you aware of anything in the
15 Registered Poultry Feeding Act Operation that makes
16 it retroactive past its effective date?

03:25PM

17 MR. LENNINGTON: Object to the form.

18 A What do you mean by retroactive?

19 Q Does it apply to anything that occurred prior
20 to the effective date?

03:25PM

21 MR. LENNINGTON: Object to the form.

22 A It applies to facilities that were in
23 existence prior to the effective date.

24 Q Okay. Would it apply to any conduct prior to
25 the effective date?

03:25PM

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1 A This particular act would not. But there are
2 a myriad of other things that could have.

3 Q Okay. What role did ODAFF play in the
4 development of this legislation?

5 A Primarily any time the legislature is working 03:26PM
6 on legislation for our agency, we're constantly
7 available as technical assistants on anything.

8 Q Did ODAFF provide its emergency rules to the
9 legislature?

10 A Well, emergency rules have to go to the 03:26PM
11 legislature.

12 Q Well, as a resource for this legislation
13 specifically?

14 A I'm sure they had them.

15 Q Okay. Do you know if ODAFF provided any of 03:26PM
16 them for information or assistance to the
17 legislature related to the Registered Poultry
18 Feeding Operations Act?

19 A In 1998 we were back and forth on a daily
20 basis to the legislature. 03:27PM

21 Q Okay.

22 A So anything that they asked for, if they
23 needed information, we would try to provide it if it
24 was within our purview.

25 Q Well, the information -- if you provided 03:27PM

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1 information to the legislature, is that something
2 would be maintained at ODAFF?

3 A It would have been materials that were from
4 our files.

5 Q Okay. So those would have been made 03:27PM
6 available?

7 A They would have already been made available.

8 Q To the defendants?

9 A Yes.

10 Q Okay. Did you happen to read Mr. Parrish's 03:27PM
11 deposition from January 2008 in preparation for your
12 deposition today?

13 A Not in preparation for today.

14 Q Okay. Have you read it before?

15 A Yes. 03:27PM

16 Q Is there anything in that deposition that you
17 disagreed with?

18 MR. LENNINGTON: Objection, overbroad,
19 incapable of answering that question.

20 MR. HIXON: I've got a copy of it if you 03:28PM
21 want me to go through it.

22 MR. LENNINGTON: The entire seven or
23 eight-hour deposition is the basis of your question.
24 So I object to it.

25 Q Anything come to mind that you disagree with 03:28PM

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1 in Mr. Parrish's deposition subject to the
2 objection?

3 A I can't really -- I mean, I remember the
4 deposition, but I don't remember specific instances.
5 I didn't read it in the last few weeks by any means. 03:28PM

6 Q Okay. When did you read it?

7 A After he did it.

8 Q Okay. Under the Oklahoma Registered Poultry
9 Feeding Operations Act, what's required or I guess
10 who -- let me use my regulated community again. Who 03:28PM
11 is the regulated community under the Oklahoma
12 Registered Poultry Feeding Operations Act; who does
13 it apply to?

14 A It applies to poultry feeding operations
15 within the state of Oklahoma that are defined in the 03:29PM
16 statute.

17 Q Okay, and who's regulated; the poultry feeding
18 operation?

19 A The facility.

20 Q Who is the person that's regulated or entity 03:29PM
21 that's regulated?

22 A The registration requirement is for any person
23 to construct or operate a new poultry feeding
24 operation without having first registered, and it
25 also states that the owner or operator -- and I'm 03:29PM

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1 reading from 10-9.3 in Title 2. The owner or
2 operator of a poultry operation not classified --
3 well, wait -- may register, may elect to come under
4 them and anyone -- yeah. It's going to be the owner
5 or operator typically. 03:30PM

6 Q Okay. Of the poultry facility?

7 A Yes.

8 Q Okay. Is there anything in this Act that
9 applies to poultry integrators with the exception of
10 a poultry integrator actually owning or operating a 03:30PM
11 poultry facility?

12 A Yes.

13 Q Okay, and what is that?

14 A Specifically they're required to provide us
15 with a name and address of the integrator whose 03:30PM
16 poultry will be raised by that operation.

17 Q Okay. The integrator has to provide you that
18 information?

19 A No. The individual has to provide that
20 information. 03:30PM

21 Q Maybe my question wasn't clear. I was asking
22 whether any of this applies to the integrator.

23 MR. LENNINGTON: Objection to the word
24 this.

25 MR. HIXON: This Act, this Exhibit 8A. 03:31PM

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1 MR. LENNINGTON: You have two Acts here in
2 Exhibit 8A.

3 MR. HIXON: Do I have two?

4 MR. LENNINGTON: Yeah.

5 MR. HIXON: Registered Poultry Feeding Act. 03:31PM
6 I think the Waste Transfer and Waste Applicator Act
7 are also included in this.

8 A Yes.

9 Q The Registered Poultry Feeding Operation Act,
10 is there anything in here that regulates poultry 03:31PM
11 integrators who are not owners or operators?

12 A Are you talking about regulating or
13 requirements for them?

14 Q What's the difference between a regulating
15 them or requirements? 03:31PM

16 A Requirements are things that the integrator is
17 asked to do under this -- under this.

18 Q Okay. What's the integrator asked to do under
19 this?

20 A I'm trying to find the provision. It's in my 03:31PM
21 head but I just haven't come across yet. Here it
22 is. 10-9.5, it says regarding the section on
23 registration, education, et cetera, Subsection G,
24 which is at the very end of that section, no
25 integrator shall enter into any contract with an 03:32PM

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1 operator of a poultry feeding operation who is not
2 in compliance with the requirements of Subsection F
3 of this section.

4 Q Okay. What is Subsection F?

5 A Which is the education materials. All 03:32PM
6 operators -- that's the previous section. All
7 operators of feeding operations shall attend
8 educational sources on poultry waste handling.

9 Q Okay. I'm sorry. Go ahead.

10 A The nine-hour and three-hour rule. 03:32PM

11 Q Okay. Is there anything else in here that's
12 required of integrators?

13 MR. LENNINGTON: Objection, vague.

14 A There's one more section I need to check. No,
15 it's not a requirement of the integrators that I was 03:33PM
16 looking at.

17 Q Okay. Is this the only -- this 10-9.5G, is
18 this the only requirement of an integrator in this
19 Act?

20 A Are we talking about the Senate Bill 1170 as a 03:34PM
21 whole or are we talking about the Oklahoma
22 Registered Poultry Feeding Operations Act as it
23 exists today?

24 Q What was in Senate Bill 1170 other than the
25 Oklahoma Registered Feeding Operation Act? 03:34PM

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1 A There was an educational provision that
2 required -- yes. It's 10-9.22 regarding funding of
3 the educational programs and the initials days, and
4 I'm looking at A2, about the second sentence down,
5 to ensure that the educational programs are fully 03:34PM
6 and adequately funded, integrators doing business in
7 the state shall contract with the Oklahoma State
8 University through the Oklahoma Cooperative
9 Extension Service to provide educational training
10 courses and certification of operators of poultry 03:35PM
11 feeding operations and land applicators of poultry
12 waste.

13 Q Okay.

14 A That's still the status of the law; however,
15 that was only for three subsequent fiscal years from 03:35PM
16 the passage in 1998.

17 Q Okay. So the legislature could have required
18 certain acts of the integrators in Senate Bill 1170?

19 MR. LENNINGTON: Objection, vague.

20 A Legislature can do whatever they want to do. 03:35PM

21 Q Okay, and these two instances that you pointed
22 out, are they only to integrator-related
23 requirements?

24 MR. LENNINGTON: Object to the form.

25 A That I can recall and find perusing through 03:35PM

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1 here, yes.

2 Q Okay. Has the Register Poultry Operations
3 Feeding Act, has that been amended at all since it
4 was enacted or went into effect in 1998?

5 A I know of at least once it was amended -- 03:36PM
6 twice. Excuse me.

7 Q Do you know the substance of those amendments
8 were?

9 A In 2002 it was a new provision added regarding
10 new facilities located within one mile upstream of 03:37PM
11 the Pensacola Project boundary pursuant to the Grand
12 River Dam and FEMA.

13 Q Okay, and that's related to Grand Lake?

14 A Yes.

15 Q Okay, and what was the other amendment that 03:37PM
16 you're aware of?

17 A Here it is. In 2005 there was amendments to
18 Section 10-9.5. The major change there was
19 regarding the educational requirements, and it
20 essentially changed the -- it changed the year that 03:38PM
21 we counted education on from a fiscal year to a
22 calendar year.

23 Q Okay. Is that the only change?

24 A I can look here. I printed all the historical
25 pages out. To the Registered Poultry Feeding 03:38PM

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1 Operations Act?

2 Q Yes.

3 A That's the only other -- that was the last
4 change in it.

5 Q Okay. Are you aware of anything in the 03:38PM
6 Registered Poultry Feeding Act or the regulations
7 promulgated pursuant to that Act that designate that
8 poultry litter will be applied at an agronomic rate?

9 A We use the term poultry waste in the Act and
10 the rules. 03:39PM

11 Q Okay. Let's look at the definition. The
12 poultry waste, Paragraph 21, means poultry
13 excrement, poultry carcasses, feed wastes or any
14 other waste associated with the confinement of
15 poultry from a poultry feeding operation. Is that 03:40PM
16 what you are referring to?

17 A That's the definition, yes.

18 Q I believe we've looked at early in the
19 emergency rules there was a definition for litter.

20 A Yes. 03:40PM

21 Q Okay. So you understand what I'm talking
22 about when I'm talking about litter?

23 A Yeah, I do.

24 Q Okay, and what do you understand me to be
25 talking about when I'm talking about litter? 03:40PM

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1 A One of the items that's considered poultry
2 waste made up of some of the same items as what we
3 would consider that -- it's essentially the bedding
4 and the waste and overfills of feed and such as
5 that in the barns.

03:40PM

6 Q Okay, and then back to my question, is there
7 anything in the Registered Poultry Feeding Act or
8 the regulations that require poultry litter or, if
9 you prefer, poultry waste be applied at an agronomic
10 rate?

03:41PM

11 MR. LENNINGTON: Objection to the form.

12 A It's supposed to be done in compliance with
13 soil and litter tests, waste management plans, as
14 well as all of the myriad of other
15 don't-cause-pollution, et cetera, items. So that's
16 one of the many factors is an agronomic rate as that
17 term is routinely used.

03:41PM

18 Q Okay. What is meant by an agronomic rate?

19 A I read a good definition in one of these
20 expert reports actually. Let me find it here. In
21 the expert report of Gordon V. Johnson. I'm sorry.

03:41PM

22 Q Go ahead.

23 A On Page 2 it's described -- it says
24 agricultural practices are considered agronomic if
25 the practices are essential to effective and

03:43PM

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1 economic soil management and crop production.

2 Q Okay. Does that definition appear anywhere in
3 the Oklahoma Registered Poultry Feeding Act or the
4 regulations promulgated under the Act?

5 A No. That's not a defined term. 03:43PM

6 Q Okay. Let's go back to the definitions in the
7 current version of the Act. As land application is
8 defined here, land application means the spreading
9 on or incorporation into the soil mantle primarily
10 for beneficial purposes. Would you agree there's 03:44PM
11 not any reference there to agronomic rate?

12 A That word doesn't appear there. It doesn't --
13 it shouldn't.

14 Q Okay, and we've already looked at the
15 definition of poultry waste. There's not any 03:44PM
16 reference there to agronomic rate. This definition
17 of poultry waste, is there any -- would you agree
18 that there's not any reference here to phosphorus or
19 any phosphorus compounds?

20 A You mean the -- I mean, it's inherent in 03:45PM
21 poultry excrement and any other wastewaters or any
22 other waste associated with the confinement.

23 Q Okay. Where are you seeing wastewaters?

24 A I misspoke. I said waste associated. I
25 corrected myself. 03:45PM

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1 Q Okay. How is it inherent?

2 A It's one of the many constituents of poultry
3 excrement, et cetera.

4 Q Okay. Where in this definition is there a
5 reference to any constituent?

03:45PM

6 A This definition does not contain that term.

7 Q Okay. Would you agree, poultry excrement,
8 that's something you can see, something you can
9 feel, something you can hold, although you probably
10 wouldn't want to?

03:45PM

11 A I would not agree that all poultry excrement
12 is something you can hold. I mean, there are
13 aspects of it that are -- well, there are multiple
14 constituents as part of that but --

15 Q Explain what you just said.

03:46PM

16 A Well, I mean, poultry waste is -- it's created
17 in the barns I guess is the way to put it. It's
18 pulled out; it's land applied, and then it can --
19 then it can run off from the property. It can do
20 all kinds of things, but there's multiple

03:46PM

21 constituents in that, and to determine which ones
22 are the most -- it's all the scientific stuff of
23 determining which ones are the ones that are most
24 easily moveable, which ones are most volatile to the
25 air, those kinds of things. There's numerous things

03:46PM

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1 that are in that.

2 Q Okay, but it doesn't say -- it just says
3 poultry excrement.

4 MR. LENNINGTON: Objection.

5 Q Poultry carcass, that's something you can see 03:46PM
6 and feel; right?

7 A It can be.

8 Q Feed waste, that's something you can see and
9 feel; would you agree with that?

10 A Well, I don't know that I've ever looked at 03:47PM
11 a -- I wouldn't be able to distinguish it's part of
12 poultry waste.

13 Q But it's something you can feel, you can see,
14 feed waste, if you have --

15 A You have a mix of wastes in there. It's not 03:47PM
16 one waste, that product, poultry waste, is not.

17 Q Okay, and any other waste associated with the
18 confinement of poultry from a poultry feeding
19 operation, can we assume those things are things you
20 can see and feel, like bedding? 03:47PM

21 A No.

22 Q Bedding is not listed in here.

23 A Well, bedding is not listed there.

24 Q That would be another waste associated --

25 A It would be one of the types of the other 03:47PM

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1 waste.

2 Q Feathers?

3 A Feathers would be another part of the other
4 waste.

5 Q Okay. There's not any reference in here to 03:47PM
6 phosphorus or phosphorus compounds?

7 A Well, there is. It's inherent in it. I mean,
8 that's in the poultry excrement.

9 Q Okay. Where in this Act does it say that
10 that's in poultry excrement? 03:48PM

11 A One of the considerations of this Act is
12 phosphorus, and the reason we regulate poultry waste
13 is because the constituents of poultry waste, the
14 items that are -- that make up poultry waste have
15 constituents in it that are part of the regulatory 03:48PM
16 process, phosphorus, nitrogen and a million other
17 things.

18 Q Okay. So there's a million other things that
19 are contained in this definition that are inherent
20 to this definition of poultry waste; is that your 03:48PM
21 testimony today?

22 A There are many things. A million might be an
23 overstatement.

24 Q Okay. How many things are regulated by the
25 State of Oklahoma that are contained in this 03:48PM

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1 definition of poultry waste that are not listed
2 here?

3 A Well, there's lists of constituents of poultry
4 waste.

5 Q Okay. Where are those lists? 03:49PM

6 A The best conglomeration I saw of those was in
7 one of these reports. Let me figure out which one
8 it was in.

9 Q Okay, and you are referring to one of the
10 expert reports? 03:49PM

11 A Yes, sir, I am.

12 Q Okay. Is that expert report part of Oklahoma
13 law?

14 A You said what else is regulated, and I can go
15 through a list of items. 03:49PM

16 Q Okay. Well, I'm --

17 MR. LENNINGTON: Objection. You asked her
18 what is included in the definition of poultry waste,
19 and she was going to answer your question. That's
20 what you've been asking. You've asked it several 03:49PM
21 times. So if you would just let her answer the
22 question, I think she can.

23 MR. HIXON: If she is going to answer with
24 an expert report --

25 MR. LENNINGTON: From the State of 03:49PM

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1 Oklahoma, and she's testifying as the State of
2 Oklahoma, yes. I think that's appropriate. If you
3 ask what's included in the definition of poultry
4 waste, it includes the term any other waste that she
5 -- as part of her answer, I think it's fair to allow 03:49PM
6 her to talk about what's in an expert report that
7 was prepared by the State of Oklahoma. I think it's
8 fair to allow her to answer that way. That's what
9 she was trying to do before you interrupted her.

10 Q Has the Department of Agriculture ever brought 03:50PM
11 any kind of enforcement action or investigated a
12 complaint based upon one of these expert reports
13 that we've talked about earlier today?

14 A Well, no. That would be inappropriate.

15 Q Thank you. Okay. Is there anything in 03:50PM
16 Oklahoma law that defines these other factors that
17 are inherent within the poultry waste definition?

18 A Repeat it.

19 Q It's the same question that I asked. Is there
20 anything in Oklahoma law that defines these other 03:50PM
21 factors that are inherent in the definition of
22 poultry waste? I mean, is there something out
23 there --

24 A I mean, poultry waste is what it is, and it is
25 made up of numerous constituents. Some have been 03:50PM

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1 specifically identified in the statute as areas of
2 concern. There are numerous other things in that
3 that may be areas of concern as well that we just
4 don't have a statutory mechanism to deal with them
5 at this time or we don't have it in this Act, but 03:51PM
6 there are numerous other provisions out there that
7 can cover that kind of stuff, but I can't talk about
8 poultry waste and not talk about nitrogen and
9 phosphorus and all the other constituents associated
10 with it because they're all part of it. 03:51PM

11 Q Okay. I'm asking you to identify these other
12 specific provisions that you just referenced, and
13 that's not an expert report. What is it that
14 you're --

15 A Are you saying water quality standards where 03:51PM
16 we see excess arsenic, for example, would be a
17 potential one? There's excess arsenic identified.
18 Well, that could be a part of poultry waste if we've
19 traced it to that. If that's one of the
20 constituents on the list, then that's part of 03:51PM
21 poultry waste.

22 Q Okay.

23 A So water quality standards can address there,
24 and there's other places.

25 Q Okay. So you're saying that water quality 03:52PM

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1 standards are inherent in this definition of poultry
2 waste?

3 A I'm saying that you asked me what's poultry
4 waste, and we have a laundry list of items and the
5 items -- and it's -- it makes no sense to try to
6 separate poultry waste that you hold in your hand
7 from what's in it. It's got constituents.
8 Everything is made up of stuff.

03:52PM

9 Q Okay. What I'm trying to ask, I guess Farmer
10 Jones out in the field wants to know what he can do,
11 what he can spread on his field. He can spread
12 poultry waste. He's being regulated on the basis of
13 poultry waste. This is the definition of poultry
14 waste.

03:52PM

15 A This is the definition of poultry waste in
16 this Act.

03:52PM

17 Q Okay, and I'm asking where else would Farmer
18 Jones go for these other issues that you're
19 referring to?

20 A What do you mean where else would he go?

03:53PM

21 Q Well, you're talking about the phosphorus;
22 you're talking about nitrogen. What would he rely
23 on -- he wants to comply with the letter and spirit
24 of Oklahoma law. What does he need to do to do that
25 and land applying poultry litter?

03:53PM

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1 A No runoff makes it simple.

2 Q Okay. Where is that requirement?

3 A It's the requirement that the facilities don't
4 run off in the statute. Should be no discharge of
5 poultry waste to the waters of the state. 03:53PM

6 Q Where are you reading that?

7 A I'm sorry. I should have told you that. I'm
8 in Section 10-9.7. It's the section entitled
9 Utilization of Best Management Practices and Animal
10 Waste Management Plans, and it's Subsection B at the 03:54PM
11 beginning of the top of the next page.

12 Q Okay. How does Farmer Jones know whether
13 there's runoff from his application of poultry
14 litter?

15 A He can test downstream. He can rely on the 03:54PM
16 Oklahoma Cooperative Extension Service for technical
17 assistance to make those determinations. He can
18 rely on NRCS to assist him in making those
19 decisions. If he is as proactive as you are saying
20 that he is and he wants to go out and follow the 03:54PM
21 letter of the law, then he would get involved with
22 each and every one of these resources that are
23 available to him.

24 Q Test downstream, what are you referring to
25 there? 03:54PM

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1 A He can take water samples above and below --
2 if he's right on a stream bank and it's his
3 property, he can easily take water samples above and
4 below the field along the waterway.

5 Q Okay, and are you saying that that's required 03:55PM
6 by Oklahoma law?

7 A No. You said if he wanted to follow the
8 letter of the law and ensure that there was no
9 runoff.

10 Q Okay.

11 A I didn't say the sampling was required by him
12 but if he is, as you said, then he's going to do
13 these things.

14 Q Okay. Is that required by Oklahoma law,
15 testing upstream and downstream from a field? 03:55PM

16 A I didn't say that. I said that the
17 requirement is no discharge of poultry waste to
18 waters of the state, and these are ways to be
19 proactive and some may be voluntary, some may be
20 not, that would allow him to ensure that from his 03:55PM
21 property.

22 Q Okay, and this says discharge. What is a
23 discharge; is that defined in the poultry -- the
24 Feeding Operations Act or the regulations?

25 A It's discharge and runoff in the definitions 03:55PM

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1 contained at Title 35, Chapter 17, Subchapter 5-2.

2 It was not defined by the statute. That means any
3 release by pumping, pouring, emptying or dumping of
4 poultry waste directly or through a manmade
5 conveyance into waters of the state, and then the
6 runoff requirement means any release by leaking,
7 escaping, seeping or leaching of poultry waste into
8 the waters into the state.

03:56PM

9 Q Okay. This best management practices we just
10 talked about, it just says discharge; is that
11 correct? I was referring to 10-9.7B1. There shall
12 be no discharge of poultry waste into the waters of
13 the state?

03:56PM

14 A Correct, and if you --

15 Q There's not any mention of runoff in that --

03:57PM

16 A Not in that sentence, no.

17 Q Okay.

18 A But under B4 it says, conform to such other
19 handling, treatment and management and removal
20 requirements deemed necessary by the state
21 Department of Agriculture.

03:57PM

22 Q Okay.

23 A And that's by rules, and if you refer to the
24 Rule 3517-5-5, Sub A, 7A, we were to refer to all
25 new poultry -- well, where is it -- yeah. Poultry

03:58PM

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1 waste shall not be stored without adequate
2 protection from rainfall and runoff, and then
3 further down in C, poultry waste shall only be
4 applied to suitable land at appropriate times and
5 rates as specified by the AWMP. Runoff of poultry
6 waste from the application site is prohibited.

03:58PM

7 Q Okay. Poultry waste shall only be applied to
8 suitable land at appropriate times and rates as
9 specified by the animal waste management plan.

10 Runoff of the poultry waste from the application
11 site is prohibited. Are those two provisions two
12 sentences, which are in this Section C, are those to
13 be read together; does the State of Oklahoma, as a
14 regulator of poultry operations, read those
15 sentences together or are they read as two separate
16 requirements?

03:58PM

03:59PM

17 A It's related to land application, both items
18 are, and land application, here's when you can do it
19 and here's the thing that's prohibited.

20 Q Okay. So --

03:59PM

21 A So the whole topic of land application, they
22 both would be read under that topic.

23 Q Okay, and I guess my question is, if you
24 apply, as specified by your animal waste management
25 plan, is that the standard that you're measuring the

03:59PM

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1 runoff by; I mean, is it the same --

2 A No. Runoff is the definition we just read a
3 second ago. The rule definition, any release by
4 leaking, escaping, seeping or leaching of poultry
5 waste into the waters of the state. 03:59PM

6 Q Okay. So incorporate that definition of
7 runoff and tell me what this Paragraph C means
8 because I'm having difficulty understanding what
9 this means as it's written or as you testified.

10 A Poultry waste shall only be applied to 04:00PM
11 suitable land --

12 Q Uh-huh.

13 A -- at appropriate times and rates as specified
14 by the AWMP.

15 Q Okay. I'm Farmer Jones. 04:00PM

16 A That is land application. Okay?

17 Q Okay.

18 A In addition, runoff is prohibited from the
19 land application event.

20 Q Okay. 04:00PM

21 A So I guess I'm not following what you're not
22 following.

23 Q Well, if I want to comply with the law and I
24 read this, it says I can apply litter as specified
25 by my animal waste management plan. Runoff is 04:00PM

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1 prohibited. How do I know if I have a runoff under
2 this law?

3 A How do you know if you've got a runoff?

4 Q How am I supposed to know, as Farmer Jones out
5 in the field applying litter, whether I'm in 04:00PM
6 violation of this regulation?

7 A Well, if you applied yesterday with a storm
8 coming and it comes a gully washer, you've got
9 runoff.

10 Q Okay. That wouldn't be in compliance as 04:01PM
11 specified by my animal waste management plan, would
12 it, though?

13 A No.

14 Q Okay. If I applied litter yesterday and I
15 applied it as specified by my animal waste 04:01PM
16 management plan, how do I know whether I'm in
17 violation of this runoff of poultry waste in the
18 second sentence?

19 A You would know -- it's so dependent on so many
20 factors, where you're located, what's the slope of 04:01PM
21 your field, all those kinds of things, that
22 if you're -- then you're going to know if you
23 applied three days ago and you've got a huge flood
24 event, for example, and a field floods, you've got
25 runoff; you've got problems. 04:01PM

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1 Q Okay, but those various factors you just
2 talked about, all of those are taken into
3 consideration in the animal waste management plan,
4 are they not?

5 A Many of them are, yes. 04:02PM

6 Q Okay. So how do I know whether I'm complying
7 with this? If I wanted to self-police, how would I
8 police?

9 A What else are you doing to prevent it? I
10 mean, that's what it boils down to. Are you -- how 04:02PM
11 close are you to the waters of the state? Are you
12 in -- we're talking generically, although -- I'm
13 talking generically about the statute, although
14 Illinois River watershed is probably the best
15 example of a place where there's plenty of runoff 04:02PM
16 going on just because you are dealing with slopes;
17 you are dealing with a higher rainfall than other
18 places in the state; you are dealing with all kind
19 of factors, but runoff is -- can be pretty evident.

20 Q Okay. How -- what do you mean by pretty 04:02PM
21 evident?

22 A You got springs coming off your property
23 running through the middle of the field and it comes
24 about. Just occasionally certain times of the year
25 you are going to end up with it. 04:03PM

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1 Q Okay, and a spring in the middle of my field,
2 is that something that would be taken into
3 consideration in my animal waste management plan?

4 A It would, but it's a matter of is it an annual
5 stream, is it year round, does it always have flow 04:03PM
6 or is it only certain times of the year, and is that
7 all taken into account, and then are there certain
8 times of the year after a big rainfall in another
9 area of the state that infiltrates groundwater, does
10 it come up through that field and create a runoff 04:03PM
11 problem from that site. I mean, there's just so
12 many different ways that it can occur.

13 Q Okay. We need to change tapes. We'll take a
14 little break.

15 VIDEOGRAPHER: We're now off the Record. 04:03PM
16 The time is 4:03 p.m.

17 (Following a short recess at 4:03 p.m.,
18 proceedings continued on the Record at 4:15 p.m.)

19 VIDEOGRAPHER: We are back on the Record.
20 The time is 4:15 p.m. 04:15PM

21 Q Miss Gunter, before we went on break, we were
22 talking about this Paragraph 7C in the regulations.
23 You've given several examples. Would you agree with
24 me that there has to be a violation of the animal
25 waste management plan before there can be a runoff 04:16PM

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1 in this as --

2 A No.

3 Q No. So your testimony is I can -- Farmer

4 Jones, he can observe everything that's required of

5 him in his animal waste management plan and he can

04:16PM

6 still be in violation of this Paragraph C?

7 A The animal waste management plan is one piece

8 of the statutory requirements, and there are many,

9 many, many requirements in that animal waste

10 requirement plan. However, throughout the statute

04:16PM

11 there are also things regarding -- for example, look

12 at the BMP section that we talked about a second ago

13 in the statute on the 10-9.7, no discharge of

14 poultry waters to waters of the state. No waters --

15 well, there's a given, but poultry waste handling,

04:16PM

16 treatment, management and removal shall not create

17 an environmental or a public health hazard, not

18 result in the contamination of waters of the state

19 and conform to such other handling, treatment,

20 management and removal requirements deemed necessary

04:17PM

21 by the department. Again, in the statute under C6C,

22 poultry waste shall only be applied to suitable land

23 at appropriate times and rates. Discharge or runoff

24 of waste from the application site is prohibited. I

25 mean, all of those things work together to create

04:17PM

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1 the provisions that Farmer Jones has to comply with.

2 Q Okay. How does Farmer Jones comply with all
3 of those if it's not the animal waste management
4 plan?

5 A He's extra careful and he evaluates his field 04:17PM

6 and he looks at them, and if he can -- the waste
7 management plan is a ceiling in many cases. There's
8 all kinds of level you can land apply at that don't
9 have to be as much as the waste management plan says

10 at every occasion. You can ratchet that down, and 04:18PM

11 you can land apply a little whenever you think it's
12 a time of year that may not be your best time of
13 year that runoff can occur. You can take all kinds

14 of steps in addition to your plan. I mean, your
15 plan is let's do this, but it's you better not do 04:18PM

16 beyond this as far as application and things like
17 that go, but there's a million levels below that a
18 responsible farmer, as the farmer you described, can
19 look at, and if he wants to say, okay, well, my

20 waste management plan says I can do this, but my 04:18PM

21 soil test, for example, at the bottom, OSU says
22 don't go above 65. Okay. I'll not go above 65
23 because that's the plant utilization, that the crops
24 might not take up more than that. So if I'm going

25 to be over the top careful and not create an 04:19PM

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1 environmental or public health hazard, not create
2 runoff, I'm more likely to be better off if I use
3 that requirement or that suggestion from the soil
4 result.

5 Q Okay. Does the OSU soil sample test, do those 04:19PM
6 have the effect of law?

7 A You have to prepare your waste management plan
8 taking into account the soil test results.

9 Q Okay, but the OSU soil sample tests results
10 that I've seen have N, P and K and it has -- 04:19PM

11 A And results for that specific field.

12 Q -- a recommendation. Does that recommendation
13 have the effect of law?

14 A The recommendation on it is one of the things
15 that's taken into account in the plant, and it's 04:19PM
16 information for the farmer to take into account to
17 ensure compliance, but the -- where is it? Where am
18 I looking? Let me look at my rules for a second.

19 There's something that talks about it. It includes
20 all nutrient analysis data, including soil and 04:20PM
21 poultry waste testing, and I'm talking about
22 17-5-5A3. So that document is incorporated as a
23 part of your animal waste management plan.

24 Q Okay. Does the recommendation that appears on
25 that soil sample test, does that trump what it says 04:20PM

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1 you can apply in your animal waste management plan?

2 A No. It's one of the many factors that you
3 look at in the -- a plan is not rote, thou shalt do
4 this, that shalt do this and you'll never have a
5 problem. A plan is just exactly what it says. It's 04:20PM
6 a plan. Here's guidelines. Here's things you need
7 to take into consideration. Yes, you're required to
8 take these things into consideration whenever you
9 are doing your land application but, again, it's
10 very similar. You don't want to exceed what they 04:21PM
11 recommend in that plan, but all of that
12 documentation should be taken into account by the
13 individual producer when they're making sure they're
14 in perfect compliance with the entire law.

15 Q Okay. My question still remains, how do they 04:21PM
16 know if they're in compliance with the entire law?
17 You testified just a moment ago that there are a
18 million levels below this animal waste management
19 plan ceiling.

20 A I keep using a million, don't I? 04:21PM

21 Q Yeah.

22 A It's a good number I guess.

23 Q At what point -- how do I know if I'm in
24 operation and I've got this animal waste management
25 plan, at what level of these million levels do I 04:21PM

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1 know --

2 MR. LENNINGTON: Objection to form.

3 Q -- am I in violation of all of these laws and
4 regulations?

5 A You can ensure that if you do the sampling. 04:22PM

6 You can go above and beyond all of these things, any
7 of the basic requirements listed in your plan. You
8 can do -- you can get additional education. You can
9 get someone to come out from the extension to give

10 you additional guidance. You can go to NRCS and ask 04:22PM

11 for additional guidance, I mean, beyond what they
12 put together in their plan. All of these things are
13 free services that are provided to farmers in

14 virtually every county in the country. You can
15 go -- you've got your soil test results. He looks 04:22PM

16 at those soil tests results. He sees that

17 recommendation and says, hey, okay, that's another

18 way I can maybe ensure because I know that's lower

19 than this number, but I want to ensure that I'm in

20 compliance and don't have any runoff. You put in 04:22PM

21 grass buffer strips, all of those kinds of things

22 that you choose to do. I mean, you are talking

23 about the quintessential farmer that wants to do

24 everything perfectly, and he can do his own sampling

25 and make adjustments if he wants to or he can work 04:23PM

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1 with an entity to do his own sampling downstream --
2 above and down, and he'd have results that he could
3 see if he's contributing and, I mean, that's just
4 another tool that is available to him.

5 Q Okay. To do his own sampling?

04:23PM

6 A Yes.

7 Q Okay. Up and downstream?

8 A It's possible.

9 Q Okay. What does the State of Oklahoma do to
10 verify or to determine whether an owner or operator
11 of a poultry facility subject to the Registered
12 Poultry Feeding Operations Act is in violation of
13 this Paragraph 7C or any of these other provisions
14 that you've specified?

04:23PM

15 A Our minimal starting point is look at the
16 plan, look at their land application records, look
17 at their soil test records, look at their litter
18 analysis records.

04:23PM

19 Q Okay, and how can you tell whether there's
20 runoff if you look at the animal waste management
21 plan?

04:24PM

22 A Then you compare that to -- you compare that
23 waste management plan to all the record keeping that
24 they've done. As a whole, you do a site inspection.
25 It's not something obviously that you can do just in

04:24PM

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1 a void. You do a site inspection. You then -- on
2 occasions we have the authority to take samples up
3 and down, and we have the authority to take all
4 those things into account, and we've got several
5 technical experts on staff that we bring into a case
6 if we need them and they can assist us in verifying
7 those things.

04:24PM

8 Q Okay. How many poultry operations subject to
9 this Registered Poultry Feeding Operation Act has
10 the State of Oklahoma taken some kind of action
11 against, whether an administrative action or in
12 seeking injunctive relief, for violation of this
13 Paragraph 7C or the regulation, the BMPs that
14 prohibits any discharge or this Paragraph C3C that
15 prohibits discharge or runoff of waste from the
16 application site?

04:24PM

04:25PM

17 A I haven't totaled numbers up. What I have
18 pulled out is under the CAFO Act, discharges are
19 reported to the agency, and we maintain a discharge
20 database. We made a review of that and determined
21 that it was only one CAFO with a discharge in the
22 Illinois River watershed, and that database only
23 goes back to approximately 2000, and it was a swine
24 facility; it was not a poultry operation. So there
25 were none in those four counties. I'm not talking

04:26PM

04:26PM

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1 about watershed specific because sorting problems in
2 some of those databases. That's Adair, Cherokee,
3 Delaware and Sequoyah for a reportable type of
4 discharge.

5 Q Okay. 04:26PM

6 A Then --

7 Q And that was a CAFO?

8 A It was a swine CAFO in that area. Then we
9 have -- we have a number of fines on poultry

10 operations. They are not identified on our specific 04:27PM

11 list as what the allegation was on it. So it would

12 be a matter of pulling out individual files to

13 determine exactly what these were, but I've got a

14 listing related to these individual cases with a

15 case number associated with it that I should be able 04:27PM

16 to -- and also that I have my complaints database

17 where if the allegation was, for example, way back

18 in '97 and I don't know -- this is a poultry

19 complaint for sure. It was open in February of '97

20 and the allegation was runoff. So I can do some 04:27PM

21 cross references that way between these documents.

22 Q Okay. Sitting here today, can you tell me the

23 number of times there have been some kind of action

24 taken for a violation of one of these regulations or

25 statutes? 04:28PM

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1 A I haven't broken them down into that. So I
2 don't have a figure available at this moment.

3 Q And what would it take to get that figure?

4 A Probably it would take digging through some
5 boxes. 04:28PM

6 Q These boxes?

7 A Yeah, and doing some cross referencing on the
8 files, numbers.

9 Q Were you able to determine at lunchtime the
10 information regarding the most recent application of 04:29PM
11 the Poultry Registered Feeding Act?

12 A Yes.

13 Q Okay, and who is the most recent?

14 A The most recent registered facility is Brad
15 and Andy Felts, May 19th of '08. 04:29PM

16 Q Okay. Where are they located?

17 A In the Illinois River watershed.

18 Q Can you get a little more specific than that?

19 A I can pull the file.

20 Q Okay. Do you know what integrator they're 04:29PM
21 associated with?

22 A No. They didn't send me that info. It will
23 be in the file.

24 Q Okay. Looks like you have more information on
25 your sheet there. 04:30PM

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1 A She sent me the last two facilities.

2 Q Who is prior to the Felts?

3 A James Morrell No. 2 is the name of the
4 facility, May 13th, '08.

5 Q And they're also in the Illinois River 04:30PM
6 watershed?

7 A Yes.

8 Q Okay. So ODAFF is continuing to accept
9 applications for growers in the Illinois River
10 watershed? 04:30PM

11 A Registrations.

12 Q Okay. Do you know whether the Felts'
13 operation is a new operation or whether they were
14 taking over an existing operation?

15 A According to the information told to me, 04:30PM
16 they're both new, not transfers.

17 Q Okay. So both the Morrell and Felts are new
18 operations?

19 A Yes.

20 Q Are growers required to register before they 04:30PM
21 build a facility?

22 A I buried my statute. Hang on. They have to
23 register prior to constructing or operating a new
24 poultry feeding operation.

25 Q Do you know whether the Felts or Mr. Morrell 04:31PM

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1 had begun constructing their operation?

2 A Only if that information is in the file, but I
3 don't know generally.

4 Q Okay. Can ODAFF deny a registration?

5 A It's a registration. 04:31PM

6 Q What happens if you operate a facility and
7 you're not registered?

8 A Then you're not in compliance with the
9 registration.

10 Q Okay, and what would happen to a grower that's 04:32PM
11 not in compliance with the registration requirement?

12 A We would approach them and say better get
13 registered now, and potentially depending on the
14 circumstances of the case, that's a case-by-case
15 deal, would determine if they were -- if it was a 04:32PM
16 fineable offense, if it needed to be referred on,
17 that kind of thing.

18 Q What does ODAFF do with the application for
19 registration; what's done with that information; do
20 you just collect it and stick it in a box, or is 04:33PM
21 there something done with the information?

22 A What do you mean done with the information?

23 Q Well, when you receive an application for a
24 new poultry facility, the Felts, for example, what
25 happens to that application; what process does it go 04:33PM

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1 through?

2 A It's reviewed for completeness to make sure
3 all items on the document were provided properly.

4 Q Okay. Is there anything else that's done to
5 it?

04:33PM

6 A It's processed. If there's nothing -- if
7 there's nothing missing, meaning it's 100 percent
8 complete, then it would be then sent to the
9 administrative assistant who would log it in, issue
10 it a poultry ID number and prepare a file and notify
11 the inspector.

04:33PM

12 Q Is there anything in the process that gives
13 the poultry grower authorization to begin operation
14 or does he satisfy the requirements of the law once
15 he makes the application?

04:34PM

16 A A completed application and he's satisfied all
17 of those requirements, it's -- it's not necessarily
18 an authorization. It is a registration. It's not
19 like our licensing programs or our permitting
20 programs. It's a little bit different the way the
21 legislature set it up. So it's a registration
22 program. So once they provided the appropriate
23 information for the registration and then we've
24 identified them and we've done -- get all the
25 information out, then we begin the process of

04:34PM

04:34PM

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1 starting to do inspections and those sort of things.

2 Q Okay. So once they've completed an
3 application, the complete application, there's
4 nothing to prevent them from beginning operations?

5 A Nothing from the Registered Poultry Feeding 04:35PM
6 Operations Act.

7 Q Okay. Is there anything from any other
8 Oklahoma law or Oklahoma regulation that ODAFF --

9 MR. LENNINGTON: Object to the form.

10 Q -- could stop a poultry grower from beginning 04:35PM
11 operations?

12 MR. LENNINGTON: Objection. Are you
13 talking about Oklahoma environmental agricultural
14 law? I'm assuming you're not talking about, like,
15 other fire codes and health and safety things. 04:35PM

16 MR. HIXON: Yeah.

17 MR. LENNINGTON: Sorry. It was a little
18 overbroad is all.

19 A Yeah. That's where I was struggling. So is
20 there anything to prevent them -- 04:35PM

21 Q Can you stop -- I guess my question is, can
22 you stop additional poultry operations from entering
23 the Illinois River watershed; is there anything the
24 State of Oklahoma can do under existing law to stop
25 that from occurring? 04:36PM

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1 MR. LENNINGTON: Objection, overbroad.

2 A It's difficult to answer that question in that

3 way because if you're talking about the whole of

4 Oklahoma law and you're talking about -- the Scenic

5 Rivers Commission has ability to promulgate rules 04:36PM

6 occasionally, and they may have some ability in that

7 watershed to do something. The water -- Oklahoma

8 Water Resources Board has authority to do water

9 quality standards that could result in a stoppage of

10 something related to that. There's -- I think it's 04:37PM

11 difficult to answer that question in that way, that

12 there's nothing else that could stop them. I mean,

13 if they -- I mean, if there's a landowner out there

14 that wanted to do a nuisance lawsuit prior to the

15 operation going in, I mean, there's a potential that 04:37PM

16 could be -- that could hold it up in court.

17 Q Okay. A nuisance action by a private

18 landowner is not an action by the State of Oklahoma;

19 is that right?

20 A No, it's not, but it's in the state court 04:37PM

21 system.

22 Q Okay. The Water Resource Board doesn't have

23 any jurisdiction over poultry operations; is that

24 correct?

25 A They have jurisdiction over water quality 04:37PM

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standards.

Q Okay. The Scenic River Commission doesn't
have any jurisdiction over poultry operations?

A They have authority over scenic rivers, and
the Illinois River watershed is a scenic river.

04:37PM

MR. HIXON: Let's take a break.

VIDEOGRAPHER: We are now off the Record.

The time is 4:38 p.m.

(Following a short recess at 4:38 p.m.,
the deposition was recessed.)

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SIGNATURE PAGE

I, Teena Gunter, do hereby certify that
the foregoing deposition was presented to me by Lisa
A. Steinmeyer as a true and correct transcript of
the proceedings in the above styled and numbered
cause, and I now sign the same as true and correct.

WITNESS my hand this _____ day of
_____, 2008.

TEENA GUNTER

SUBSCRIBED AND SWORN TO before me this
_____ day of _____, 2008.

Notary Public

My Commission Expires:

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CORRECTIONS TO THE DEPOSITION OF
TEENA GUNTER 30(b)(6)
Volume I

PAGE AND LINE NUMBER	CORRECTION
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TULSA FREELANCE REPORTERS
918-587-2878

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 2 NORTHERN DISTRICT OF OKLAHOMA
 3
 4

5 W. A. DREW EDMONDSON, in his)
 capacity as ATTORNEY GENERAL)
 OF THE STATE OF OKLAHOMA and)
 6 OKLAHOMA SECRETARY OF THE)
 ENVIRONMENT C. MILES TOLBERT,)
 7 in his capacity as the)
 TRUSTEE FOR NATURAL RESOURCES)
 8 FOR THE STATE OF OKLAHOMA,)

9 Plaintiff,)

10 vs.)

11 TYSON FOODS, INC., et al,)

12 Defendants.)

4:05-CV-00329-TCK-SAJ

13 - - - - -

14 VOLUME II OF THE VIDEOTAPED
 15 30(b)(6) DEPOSITION OF TEENA GUNTER, produced
 16 as a witness on behalf of the Defendants in the
 17 above styled and numbered cause, taken on the 28th
 18 day of August, 2008, in the City of Oklahoma City,
 19 County of Oklahoma, State of Oklahoma, before me,
 20 Lisa A. Steinmeyer, a Certified Shorthand Reporter,
 21 duly certified under and by virtue of the laws of
 22 the State of Oklahoma.
 23
 24
 25

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I N D E X

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1 (Whereupon, the deposition began at
2 1:15 p.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the continuation of the deposition of Miss Teena
5 Gunter. Today is August 28th, 2008. The time is 01:15PM
6 1:15 p.m. Would counsel please identify themselves
7 for the Record?

8 MR. LENNINGTON: Dan Lennington for the
9 State.

10 MR. HAMMONS: Trevor Hammons for the State. 01:15PM

11 MR. HARDEN: Larry Harden for the Oklahoma
12 Department of Agriculture, Food & Forestry.

13 MR. HIXON: Philip Hixon for Peterson
14 Farms, Incorporated.

15 MS. TUCKER: K. C. Tucker for the George's 01:15PM
16 entities.

17 MR. FREEMAN: Bruce Freeman for Simmons.

18 MR. BURNS: Bryan Burns for the Tyson
19 defendants and Cobb-Vantress.

20 VIDEOGRAPHER: And on the phone? 01:16PM

21 MS. GRIFFIN: Jennifer Griffin for Willow
22 Brook Foods.

23 MR. SANDERS: Bob Sanders for the Cal-Maine
24 defendants.

25 MR. TUCKER: Colin Tucker for Cargill and 01:16PM

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1 Turkey Production.

2 VIDEOGRAPHER: Thank you.

3 MR. HIXON: Before we start, there's a
4 couple of housekeeping issues. On these 30(b)(6)
5 depositions, it's been agreed that the defendants 01:16PM
6 will take just one deposition, and we've gone
7 through five hours of our one day at seven hours,
8 and it's apparent from the progress that's been made
9 we're not going to complete all of these topics at
10 the end of that seven hours. 01:16PM

11 So I'll make this request on the Record that
12 we continue this, go ahead and finish out these two
13 hours, and then continue another day for another
14 seven hour day or at least another four-hour day to
15 address some of these other topics. Specifically I 01:17PM
16 know the water quality complaint violation topics, I
17 asked a question about that yesterday and it was my
18 understanding that Miss Gunter couldn't answer that
19 question without consulting the information in the
20 boxes, and it's at least Peterson's position that 01:17PM
21 she's not adequately prepared on that topic if she's
22 going to have to dig through these very many boxes
23 to answer that question.

24 I noticed that she prepared some summary
25 sheets for some of these topics. That topic could 01:17PM

1 be addressed in a summary format, but the point is
2 we're not going to get to all of these topics today.
3 So I'm making that request of the State. I'm not
4 expecting an answer now, but before we leave today,
5 if we could have an answer and then, of course,
6 reserving our right to seek leave of court, absent
7 any agreement among the parties.

01:17PM

8 MR. LENNINGTON: We'll talk about your
9 request. We disagree that she's not prepared to
10 testify as to the contents of six or seven or eight
11 boxes by memory, and if she's able to put something
12 in a summary form, we can talk to her about that.
13 You could ask her about that, but we're not going to
14 have her memorize the contents of six boxes so we
15 disagree that she's not prepared, but we'll consider
16 your request for additional time.

01:18PM

01:18PM

17 MR. HIXON: Okay.

18 TEENA GUNTER

19 having first been duly sworn to testify the truth,
20 the whole truth and nothing but the truth, testified
21 as follows:

22 CONTINUED DIRECT EXAMINATION

23 BY MR. HIXON:

24 Q Let's get started back. I'm going to hand you
25 what's marked as Exhibit 19 to your deposition. I

01:19PM

1 asked you yesterday whether you reviewed Dan
2 Parrish's deposition, and you indicated you had
3 sometime after it had been taken. This Exhibit 19
4 is a portion of that deposition, and I would refer
5 you to Page 13 of the deposition. Lines 2 through
6 15, Mr. Parrish is being asked about programs which
7 land application of poultry litter is controlled in
8 the state of Oklahoma, and Mr. Parrish responds
9 Poultry Feeding Operations Act, poultry permit
10 rules, Poultry Waste Applicator Act and rules, and
11 it's my understanding those are the same laws and
12 regulations that we discussed yesterday as applying
13 to the land application of poultry litter; would you
14 agree with that?

01:19PM

01:19PM

15 **A** Yes, we discussed those three laws.

01:20PM

16 **Q** Okay. If you'll turn the page, Page 14,
17 line -- beginning at Line 19, now what are the
18 primary objection or objectives of the litter
19 utilization program that your division administers,
20 and Mr. Parrish responds beginning on Line 22, the
21 primary objectives are by law to ensure that poultry
22 waste is applied at agronomic rates, applied -- it's
23 a crop that is on the field where it's applied to --
24 can uptake the nutrients from the waste. That's
25 continued on to Page 15, Line 1. Do you agree,

01:20PM

01:20PM

1 speaking on behalf of the State of Oklahoma, with
2 Mr. Parrish's testimony, beginning at Line 22, Page
3 14 and continuing on to Page 15, Line 1?

4 MR. LENNINGTON: Object to the form.

5 A Yes. That's one of the objectives of the 01:21PM
6 statute.

7 Q Okay. Can you -- do you have the exhibits
8 from yesterday? I believe Exhibit 8A through 8C
9 were these laws that are being referred to here.

10 Can you tell me where in the Registered Poultry 01:21PM
11 Feeding Operations Act, its regulations or the Waste
12 Applicator Act or its regulations, that's required
13 that poultry litter be applied in an agronomic rate?

14 MR. LENNINGTON: Object to the form,
15 misstates -- mischaracterizes the testimony. 01:21PM

16 A The provisions he's primarily referring to
17 would be in the statute itself, and that's 8A.

18 Q Okay, and what section is that that you are
19 referring to?

20 A I'm talking about 10-9.7, Title 2. 01:22PM

21 Q Okay, and what subdivision of that?

22 A Yes. It's really a conglomeration, the
23 agronomic rate is, of B and C in the statute, but
24 probably the -- to jump to the meat of it would be
25 in C where you talk about those six items that are 01:23PM

1 required for your waste management plan, the
2 calculations and assumptions used for determining
3 land application rates, the -- all nutrient analysis
4 data for soil and poultry waste testing. Land
5 application rates of poultry shall be based on the
6 available nitrogen and phosphorus content and shall
7 provide controls for runoff and erosion. Also
8 combined with the sections that -- not result in
9 contamination, not create an environmental or public
10 health hazard, only applied to suitable land at
11 appropriate times and rates, and discharge or runoff
12 is prohibited, and then if you move over to the
13 rules, which is Title 35, Chapter 17, Subchapter 5
14 of 8B, and I'm looking specifically at 3517-5-5 in
15 Sub A7 of the items listed there include poultry
16 waste shall only be applied to suitable land at
17 appropriate times and rates as specified in the
18 AWMP. Runoff of poultry waste from the application
19 site is prohibited, and -- yeah, those are the
20 primary ones in those sections.

01:23PM

01:24PM

01:24PM

01:25PM

21 Q Okay, and what nutrients is it referring to or
22 is Mr. Parrish referring to or these provisions that
23 you've just referred to as regards to an agronomic
24 rate?

25 MR. LENNINGTON: Object to the form.

01:25PM

1 **A** The nutrients are -- if we're talking
2 specifically about nutrients, then -- where is the
3 section -- back to the statute, 8A, 10-9.7C5 is a
4 specific reference to available nitrogen and
5 phosphorus content shall be based on the available 01:25PM
6 nitrogen and phosphorus content of the poultry waste
7 and shall provide controls for runoff and erosion as
8 appropriate for site conditions.

9 **Q** Okay. Would you agree that there's no mention
10 of an agronomic rate in that provision? 01:26PM

11 **A** Well, that would be an agronomic rate if you
12 are basing it on available nitrogen and phosphorus
13 content.

14 **Q** Okay. I asked a yes or no question. Would
15 you agree that there's no mention of an agronomic 01:26PM
16 rate in that section?

17 **A** The word agronomic isn't in that section but,
18 yes, it's mentioning an agronomic rate.

19 **Q** Okay. Would you agree that there's no mention
20 of uptake in that C5? 01:26PM

21 **A** The word uptake?

22 **Q** The word.

23 **A** Does not appear in that sentence.

24 **Q** Okay. Can you tell me how the Code 590 is
25 used by ODAFF? 01:27PM

01:27PM

01:28PM

01:28PM

01:29PM

01:29PM

24 Q Okay. Do you see down the -- at the bullet
25 point, nitrogen application, can you read the

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1 nitrogen application and the phosphorus application
2 portions of that into the Record, please?

3 **A** Nitrogen application. The amount of N applied
4 from manure will not exceed the annual crop
5 requirement for N. In some situations additional N 01:29PM
6 from inorganic/commercial sources may be required to
7 supplement the organic sources situation. The N
8 applied from inorganic/commercial sources shall
9 match the crop requirement as closely as possible
10 and shall not exceed 10 percent of the recommended 01:30PM
11 inorganic commercial fertilizer rate. Manure may be
12 applied to a lagoon crop at a rate equal to the
13 estimated N removal in the harvested plant biomass.

14 **Q** Okay. Would I be correct in understanding
15 that that is requiring an agronomic rate for 01:30PM
16 nitrogen application?

17 **A** Yes, that's one of the factors. That would be
18 considered an agronomic rate, portions of it would.

19 **Q** Okay. Go ahead and read the phosphorus
20 application portion of that. 01:30PM

21 **A** Phosphorus application. The maximum planned
22 rates of P application shall be determined using the
23 Oklahoma phosphorus assessment worksheet, Tables 8
24 and 9.

25 **Q** Okay. Can you tell me just generally what the 01:30PM

1 Oklahoma phosphorus assessment worksheet is?

2 A Those are documents that are appendices to
3 Code 590.

4 Q Okay, and the substance of those documents?

5 A Well, they're attached right here. 01:31PM

6 Q Okay. We'll get to them. Who develops the
7 information on these Tables 8 and 9 that make up the
8 Oklahoma phosphorus assessment worksheet?

9 A This is an NRCS document, USDA NRCS.

10 Q Okay.

11 A And they relied on OSU and other applicable
12 information statewide, U.S.-wide.

13 Q Okay. So they do obtain information from the
14 State of Oklahoma?

15 A If you are talking about OSU, they do obtain 01:31PM
16 some information from studies and such performed by
17 OSU.

18 Q Okay. Let's go ahead and look at Tables 8 and
19 9. Can you tell me just generally -- let's look at
20 Table 8 just as an example. This first table rating 01:32PM
21 soil test P index and then the slope factors, can
22 you tell me what's being portrayed or what's being
23 communicated in that table?

24 A Are we looking at Table 8, did you say?

25 Q Table 8, yes, on Page 590-21. 01:32PM

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1 **A** Well, this is a table for annual manure
2 application rates for non-nutrient limited
3 watersheds.

1 full rate that's being described there the same full
2 rate that's being described in Table 8?

3 A Yes, not to exceed nitrogen requirements.

4 Q Okay. So is agronomic rate for nitrogen and
5 then as specified regarding the P205, is that
6 correct?

01:34PM

7 A I'm not sure I'm following your question. Can
8 you please restate that?

9 Q Is what's being communicated in this table --
10 if I'm Farmer Jones and I want to apply litter on my
11 field and I've got a field that's 0 to 8 percent
12 slope and soil that's greater than 20 inches deep, I
13 can apply litter based on an agronomic rate of
14 nitrogen uptake and up to, if I surface apply, 200
15 pounds of P205 per acre.

01:34PM

01:34PM

16 A Maybe.

17 Q Okay. Where does it say maybe in this table?

18 A Well, you're just looking at the table.
19 You're not taking it in context of the entire
20 statutory requirements as well as the entire
21 document.

01:34PM

22 Q Okay. What in the statutory requirements
23 would require me to apply something other than
24 what's specified in Table 8?

25 A Again, I'm referring to the statute, Title 2,

01:35PM

1 Section 10-9.7. There's criteria for best
2 management practices in Subsection B, and these are
3 as a part of the package of what the individual can
4 apply for. No discharge of poultry waste. Poultry
5 waste handling, treatment, management and removal 01:35PM
6 shall not create an environmental or public health
7 hazard, not result in the contamination of waters of
8 the state and conform to such other handling,
9 treatment and removal requirements, et cetera. In
10 Subsection C, calculations and assumptions used for 01:36PM
11 determining land app rates, all nutrient analysis
12 data, legal description of the lands and land
13 application rates, I'm just giving a summary of all
14 of this, and then they've -- then there's some
15 additional extra requirements there in Subsection 01:36PM
16 6C6 regarding shall be prohibited on lands subject
17 to excessive erosion, suitable land at appropriate
18 times and rates. It's a piece of the pie. I mean,
19 it's just one factor that they've got to take into
20 account. 01:36PM

21 Q Okay. Where in this does it mention anything
22 about agronomic rates or limiting what is contained
23 in Table 8 for non-nutrient limited watersheds?

24 MR. LENNINGTON: Objection, compound
25 question. 01:36PM

1 **A** Again, the -- all nutrient analysis data for
2 soil and poultry waste testing contained in
3 Subsection C, calculations and assumptions, and the
4 -- taken together with the not create an
5 environmental or public health hazard and not result
6 in contamination. All of that refers to the
7 agronomic rates.

01:37PM

8 **Q** Okay. That's your testimony is all of this
9 refers to the agronomic rates?

10 **A** It's all a part of it. It's all a piece of
11 how to put that together.

01:37PM

12 **Q** Okay. What's the criteria that's used to
13 measure these things that are described in 9.7?

14 **A** What do you mean by criteria?

15 **Q** Well, I mean, how is it measured? Just an
16 example. Okay. If I'm driving down the road,
17 there's a law that says you can't exceed the posted
18 speed limit. Speeding is prohibited. Okay. Well,
19 I've got some measure there. I can look at the big
20 white sign on the side of the highway, and I know if
21 my speedometer is greater than the big white sign,
22 I'm in violation of this law.

01:37PM

01:37PM

23 I'm asking what is that big white sign for
24 purposes of these regulations, these rules in the
25 Poultry Feeding Operation Act?

01:38PM

1 MR. LENNINGTON: Object to the form.

2 A Well, the big white sign would have a lot
3 written on it, but it's going to take into account
4 each of these factors. If you're at a property
5 location and maybe your slope is okay but you're 01:38PM
6 near the river, maybe you've got a multitude of
7 issues, it may be that your property is not suitable
8 for land application even though you've taken a soil
9 test and even though you've done all those kinds of
10 things, it may be that the property itself based on 01:38PM
11 where it's located and what kinds of situation
12 you're in, that it's just not suitable and that it
13 should be removed.

14 Q Okay. All those factors are taken into
15 consideration in writing the animal waste management 01:38PM
16 plan, is that correct, the slope and the soil types
17 and all of that?

18 A Code 590 takes some of those things into
19 account, yes.

20 Q Okay, and it also is required by the statute 01:39PM
21 that those things be taken into consideration in the
22 animal waste management plan; is that correct?

23 A The criteria for best management practices are
24 applicable whether or not they're drafted into the
25 plan. They should be drafted into the plan but if 01:39PM

1 they're not, they're still applicable.

2 Q Okay. Well, maybe my point is not clear. The
3 big white sign -- this is not the big white sign?

4 A This is the statute of the state of Oklahoma.

5 Q Right.

6 A It's a big white sign.

7 Q It's not a big white sign; it's the rule
8 that's telling me speeding is prohibited, I can't
9 exceed the posted speed limit. The criteria is
10 here's how I measure that. How do I measure this? 01:39PM

11 And let me give you another example. There was L &
12 G Farms in Stilwell. That was a CAFO; is that
13 correct?

14 A Yes.

15 Q And they have an NPDS permit; is that correct? 01:39PM

16 A I think so. I believe that was my testimony.
17 I didn't pull the file out to confirm.

18 Q Let's just assume. It doesn't matter whether
19 it's this specific operation, but they have an NPDS
20 permit. That allows them to discharge certain 01:40PM
21 amounts of, let's say, phosphates?

22 A CAFOs are required by statute to be no
23 discharge facilities.

24 Q Okay. A municipality then, they have a
25 phosphate standard in their NPDS permit; would that 01:40PM

1 be a fair assumption?

2 A That's not something I'm prepared to even
3 remotely talk about. That's not part of this --
4 part of the notice, municipal standards.

5 Q I'm asking you to assume -- okay. Well, are 01:40PM
6 there discharge standards, measurable standards in
7 an NPDS permit, regardless of what the nutrient is
8 or substance is?

9 A In a CAFO permit or in a federal --

10 Q I'm just saying an NPDS permit. If it's a 01:41PM
11 CAFO --

12 A If it's a CAFO, it's a no discharge permit.
13 It's a zero discharge.

14 Q Zero discharge of what?

15 A Of anything from the facility. 01:41PM

16 Q Okay. Anything -- what is anything?

17 A Well, the little bit I do know about a
18 municipality discharge system is that they release
19 after they treat, and that's not allowed at a CAFO
20 facility. You don't have a pipe leaving the lagoon 01:41PM
21 heading into the creek because it's been treated to
22 a particular level. So they're not even in the same
23 ballpark, although they both can be covered by an
24 NPDS permit.

25 Q I'm going to move to strike as non-responsive. 01:41PM

1 I'm asking -- you know, this will go faster if
2 you'll actually answer my questions. An NPDS
3 permit, does it have measurable criteria for
4 discharges as a general rule?

5 **A** Non-CAFOs would have discharge criteria. 01:41PM

6 **Q** Okay, and it would allow a discharge of X
7 amount, correct, I mean, whatever X amount is of X
8 substance?

9 **A** I don't -- I've never read a discharge permit
10 for a non-CAFO. I'm sorry. I've just never read 01:42PM
11 one. It's not something I've ever had to come
12 across. So when I talk about NPDS, I have to talk
13 about it in the context the CAFO program, and the
14 CAFOs are required to be non-discharge facilities.

15 **Q** Okay. How does the State of Oklahoma measure 01:42PM
16 no discharge; what criteria is used to measure no
17 discharge?

18 **A** Well, there's -- we can do annual inspections.
19 They're required to report a discharge if they were
20 to actually have one. So that's a self-reporting 01:42PM
21 portion of the CAFO materials. There's also the
22 standards that you can't have runoff from your land
23 application site, for example, just exactly like the
24 Poultry Act, no runoff.

25 **Q** Okay. What criteria is used to measure no 01:43PM

1 runoff?

2 A Well, it's easier on most liquid CAFOs because
3 it's liquid.

4 Q Okay. I'm asking you --

5 A And we take samples and we take wastewater 01:43PM
6 samples from the lagoon. We can take it from the
7 pivot. We can take them from the stream. We can
8 take them from the discharge location if it didn't
9 enter a stream. We can take monitoring well samples
10 for especially at swine locations, which all have 01:43PM
11 groundwater monitoring wells.

12 Q Okay. We're not talking about swine
13 operations. That's outside the notice. We're
14 talking about poultry feeding operations.

15 A Right. 01:43PM

16 Q How do you measure no runoff; how does the
17 State of Oklahoma measure no runoff; what number is
18 it that's no runoff and how do you determine --
19 well, first, what number is no runoff?

20 A Well, no runoff is zero showing up in the 01:43PM
21 creek from the facility when you take an up and
22 downstream sample. For example, at L and G, that's
23 one of our better tools to make that kind of a
24 determination.

25 Q Okay. How do you determine upstream and 01:44PM

1 downstream?

2 **A** You look at the facility and the topography of
3 the property. We have technical people on staff
4 that have the ability to make those determinations
5 and have done it for a number of years, and they go 01:44PM
6 out. We go out to the site. We talk to the
7 inspector, and we get a good idea of exactly where
8 the appropriate points are to take it and we take
9 multiple samples.

10 **Q** Okay. You have Farmer Jones and he's three 01:44PM
11 miles from any stream.

12 **A** In the Illinois River watershed?

13 **Q** In the Illinois River watershed, and you've
14 got Farmer Smith and he's two miles from the stream.

15 You measure upstream and you measure downstream. 01:44PM
16 How do you determine where the runoff came from?

17 **A** There's -- we discussed the fingerprinting
18 yesterday. That's typically used in a liquid system
19 where you take the waste sample and you take
20 upstream sample and you take the downstream sample, 01:45PM
21 and if you can find similar constituents,
22 constituents of the waste in the lagoon samples and
23 the downstream and it's not showing up in the
24 upstream, then you've got a much better ballpark,
25 and then we can do more intensive sampling where we 01:45PM

1 can -- and we can work with the producer to try to
2 correct any problems he appears to be having --
3 seems to be having.

4 Q Okay. Which producer, Farmer Jones or Farmer
5 Smith?

01:45PM

6 A You're talking about two miles and three miles
7 from a creek. The topography out there is not flat.
8 So you can't say we're obviously going to go past
9 this guy or anything else. If we're talking about
10 the Illinois River hypothetically --

01:45PM

11 Q What I'm asking about is criteria, how --
12 Farmer Jones is three miles from the stream. How --
13 what is the criteria used to measure no runoff for
14 Farmer Jones?

15 MR. LENNINGTON: Objection, vague, asked
16 and answered.

01:45PM

17 MR. HIXON: No, it hasn't been answered.

18 MR. LENNINGTON: Well, it has been
19 answered.

20 Q Is there no numerical measure for this for
21 what is no runoff or no discharge?

01:46PM

22 A Well, it's zero, I mean, arguably.

23 Q Zero what?

24 A Zero constituents.

25 Q Okay. Which constituents?

01:46PM

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1 **A** Whatever we're sampling for in that instance.
2 I mean, nitrogen, phosphorus, potassium, EC,
3 electrical conductivity. I mean, there's a whole
4 range of things we can sample for.

9 **A** I guess I'm not following exactly what we're
10 getting at because --

13	A	Sure.
----	----------	-------

20	A	Are you asking me for the constituents in the	01:47PM
21		litter?	

25 **A** Well, the basic constituents that are 01:47PM

1 contained in that -- I missed it -- I mean, the
2 constituents of poultry waste?

3 Q Uh-huh.

4 A There are numerous things that can be measured
5 in it. 01:49PM

6 Q Okay. Can I ask what you are referring to
7 there?

8 A Yes, sir. It is the Bert Fisher report,
9 expert report for the State of Oklahoma dated May
10 15th of 2008. 01:49PM

11 Q Okay. So when you're measuring upstream and
12 downstream, you're measuring for the constituents
13 identified in Mr. Fisher's report?

14 A We have the ability to measure all of these
15 constituents. 01:49PM

16 Q Okay. When you are measuring upstream and
17 downstream in this hypothetical with Mr. -- with
18 Farmer Jones and Farmer Smith, what are you
19 measuring upstream and what are you measuring
20 downstream as the regulator in the State of 01:49PM
21 Oklahoma?

22 A We'll take water samples from each location.

23 Q Okay. I'm asking you what you measure in
24 those water samples. I understand you are taking
25 water samples. 01:49PM

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1 **A** Right. We will measure the same things in,
2 each and it will be things -- and I don't have a
3 complete list of everything that we run on an
4 initial test. I don't have my lab list, but it's
5 things like potassium, it's things like obviously 01:50PM
6 the nitrogens, the phosphorus levels in several
7 different ways. The -- we also will measure the
8 ammonium. The electrical conductivity typically is
9 one of our standard ones we look at. I mean, there
10 are several ones. We've got a package that we'll 01:50PM
11 order from the lab and say Package No. 1 or Package
12 No. 2 or Package No. 3 for our water samples, and we
13 run those samples, plus a dup sample on all of
14 those.

15 **Q** Okay. The Package No. 1, No. 2 and No. 3, 01:50PM
16 does that contain a set --

17 **A** Contains a list of items that when we order
18 from our lab the Package No. 1, they know what
19 parameters to run on that particular sample.

20 **Q** Okay. There's a set number of constituents or 01:50PM
21 other factors?

22 **A** Right. We've developed several factors that
23 are -- just AEEMS uses them, the division ag
24 environmental services uses to -- that typically
25 gets at what they want to know about the samples. 01:51PM

1 Q Okay. Dr. Fisher's report there, is that
2 incorporated anywhere into Oklahoma law?

3 A No.

4 Q Okay. Is that provided to poultry operators
5 in the Illinois River watershed? 01:51PM

6 A No.

7 Q Okay. My understanding is that you teach some
8 of the educational requirements that are specified
9 in the Poultry Feeding Operations Act; is that
10 correct? 01:51PM

11 A I did in the past.

12 Q You have in the past?

13 A A number of years ago. It's been some time.

14 Q What did you teach?

15 A I think I taught the -- the sessions I 01:52PM
16 typically taught were the laws and rules section. I
17 think that's how they labeled it, how the extension
18 service labeled it for my session.

19 Q Okay. Did you prepare the curriculum for that
20 educational session? 01:52PM

21 A Well, I usually used the statute and the rules
22 and then just -- it was a live lecture, and I
23 usually just discussed that with them and handed out
24 copies of the statutes and the rules.

25 Q Okay. There wasn't any other curriculum other 01:52PM

1 than the statutes and the rules?

2 **A** I don't recall preparing anything. I don't
3 typically -- I tend to be more extemporaneous. I
4 don't tend to write out an outline or anything like
5 that, so I doubt I prepared anything else. I don't
6 remember doing it anyway.

01:52PM

7 **Q** Okay. In those educational sessions, did you
8 inform -- well, first, the educational sessions are
9 part of the requirements under the Poultry Feeding
10 Operations Act; is that correct?

01:52PM

11 **A** Yes. They're required to get nine hours in
12 the first year and then three hours update.

13 **Q** Okay. So the people attending the
14 presentations that you made were attending to meet
15 these educational requirements, whether the nine
16 hours or three hours?

01:53PM

17 **A** It was the nine hours. They have a set group
18 of hours. Oklahoma State University does that.
19 Laws and rules were one of the units in the initial
20 nine hours. I don't recall doing any of the
21 three-hour update trainings.

01:53PM

22 **Q** Okay, and in that nine-hour educational
23 session, did you inform these poultry operators that
24 they could have no discharge?

25 **A** I discussed no runoff and no discharge with

01:53PM

1 them, yes.

2 **Q** And what did you tell them regarding how they
3 complied with that law?

4 **A** The -- that -- I think part of our discussion
5 was simply a matter of you cannot discharge. 01:53PM
6 of the stuff may say one thing, but if you are in a
7 particular situation, I mean, this is the law for
8 the state, but you, as individual producers, may be
9 in a position where you're not -- where your
10 circumstances are slightly different because of your 01:54PM
11 topography, because of the type of land you have,
12 because of the type of litter potentially even that
13 you have, whether it's broiler or pullet or layer,
14 then you may need to take additional precautions,
15 and then they were reminded that there couldn't be 01:54PM
16 any runoff regardless of what they were doing.

17 **Q** Okay, and did you tell them how runoff was
18 measured, the criteria used to measure runoff?

19 **A** Didn't get into criteria at that level. These
20 were all new producers that were just trying to 01:54PM
21 learn the initial what to do to get into compliance,
22 to get registered and to do all these things.

23 **Q** Okay, and part of the compliance, at least as
24 I understand it from your testimony, is this no
25 runoff, no discharge standard; is that correct? 01:54PM

1	A	Correct.
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2 Q Okay, and you still haven't answered the
3 question, the criteria. What is the criteria used
4 to measure that no runoff, no discharge?

5 **A** I'm not talking the same language as you I
6 guess on criteria. I've said it was zero discharge.
7 I mean, zero is what we're looking for. We want
8 there to be no distinction between an upstream and a
9 downstream sample because that tells us there's
10 nothing new coming in in between.

11 Q Let me hand you what's been marked as Exhibit
12 10. This is a copy of the water quality standards
13 implementation plan that we talked a little bit
14 about yesterday. If you turn to Page 8, which is
15 under Section 3545-1-7, animal waste programs, A3.
16 It states, violations of a no discharge standard for
17 CAFOs, LMFOs and poultry feeding operations result
18 in enforcement actions. These actions integrate
19 corrective or remedial activities that can include
20 clean-up activities and restoration activities.

21 What measure -- what criteria does the State of
22 Oklahoma use to measure whether there's been a
23 violation of the Poultry Feeding Operations Act that
24 would result in an enforcement action?

25 MR. LENNINGTON: Objection, asked and

1 answered.

2 **A** It's -- I've described to you the process, how
3 we go to try to determine those things. I don't go
4 out there with eight in mind. We don't go out there
5 with twelve in mind if that's what you are asking 01:57PM
6 me. We go out there with there shouldn't be
7 anything that makes that sample different from that
8 sample, they should be the same, and if your
9 operation, the runoff potential area is in between
10 that and they're not the same and there's elevated 01:57PM
11 constituents of poultry litter, whether it be the
12 long list or the EC, nitrogen, phosphorus, et
13 cetera, the facility has a problem and they're not
14 in compliance with that standard, and so it's time
15 to figure out why and can they correct it, and if 01:57PM
16 they can't correct it, maybe they can't use that
17 field.

18 **Q** Okay. Let's assume there's -- you take an
19 upstream sample, you take a downstream sample.
20 There's higher incident of some constituent 01:57PM
21 downstream than there is upstream. You have
22 numerous poultry facilities in the area. How do you
23 identify who is subject to an enforcement action for
24 violating a no runoff, no discharge standard?

25 **A** That's when we bring one of our technical 01:58PM

1 folks, one of our contract, independent contractor
2 technical folks in to help us determine where that
3 location, where it's coming from, and that's where
4 we get into the fingerprinting issues that we
5 discussed yesterday and into trying to trace it
6 back.

01:58PM

7 Q Okay, and these are the fingerprinting issues
8 that we discussed that ODAFF's lab, internal lab
9 does?

10 A No, no, no. This is something that our --
11 this is what I described as our technical staff
12 takes results of all those things, including a
13 litter analysis, because that would be appropriate
14 whenever you are trying to do the fingerprinting
15 analysis, and potentially even add soil sampling
16 analysis to it, and take the whole big picture, and
17 then they do their tracing through to try to find
18 commonalities throughout the chain, and if the
19 commonalities can be traced back to this guy but not
20 this guy, then we've got a better picture that it's
21 this guy, and then we -- we just start working
22 through them that way.

01:58PM

01:58PM

01:59PM

23 Q Okay. Has the State of Oklahoma ever taken
24 any enforcement action as described in this
25 Paragraph A3 against any poultry growing operation

01:59PM

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1 in the Illinois River watershed?

2 **A** I can remember at some point we did some
3 remedial actions with some individuals, but that
4 doesn't mean we actually took an enforcement action.

5 We may have been able to clean up the problem and
6 make the appropriate changes at the facility without
7 resorting to a full-blown letter of warning, notice
8 of violation circumstance.

01:59PM

9 **Q** Okay. Was -- in that situation was there a
10 determination that there was a violation of the no
11 discharge or no runoff standard?

02:00PM

12 **A** I don't know if we got as far as saying you're
13 in violation. We said you've got problems. Let's
14 try to trace this through and figure out if you are
15 or not in compliance with that.

02:00PM

16 **Q** Okay. Do you know who that operator was?

17 **A** No, I don't. I've got a recollection of
18 work -- of some of the field staff and such working
19 with some folks. I just -- and it seems like it
20 wasn't just one, but I can't remember name or
21 facility or precise location even.

02:00PM

22 **MR. HIXON:** Okay. I mean, that question
23 that I just asked, that is directly related to
24 several of these topics that are contained in this
25 deposition notice, and that's what I was referring

02:01PM

1 to earlier when I referenced the witness is not
2 prepared to answer or to address these topics.

3 MR. LENNINGTON: Which topic?

4 MR. HIXON: Well, I mean, it's clearly 4,
5 5, 6 down through there. Those are these kind of
6 issues.

02:01PM

7 MR. LENNINGTON: And what is these kind of
8 issues?

9 MR. HIXON: These enforcement action
10 issues, violations of the no discharge standards,
11 violations of the no runoff standards, the
12 significant contribution of pollutants or whatever
13 the standard is. Those are these kinds of issues,
14 and she's not able to answer these questions.

02:01PM

15 MR. LENNINGTON: It might be in the way
16 you're asking the question, first of all. I mean,
17 you have questions about all information about
18 complaints. We have brought all the complaints with
19 us. We've brought all the files here, and she's not
20 expected to memorize them all. It's not a memory
21 test, and so instead of asking a general question
22 that could have a number of answers that would be
23 difficult to know without memorizing six, seven or
24 eight boxes, maybe there's a more specific way to
25 ask a question. She does have with her all the --

02:01PM

02:01PM

02:02PM

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1 what she could do was print off the summaries, which
2 are in summarized format of all the complaints, and
3 maybe you could go through those with her, but a lot
4 of these files are kept, you know, in boxes, and
5 that only a certain type of information is actually 02:02PM
6 put on a spreadsheet, and so unless that information
7 can be put on a spreadsheet, she's not going to be
8 able to memorize the hundreds and hundreds of
9 poultry operations that have existed in the Oklahoma
10 side of the IRW. 02:02PM

11 MR. HIXON: Well, the nature of an
12 enforcement action or a violation is certainly
13 something that could be put on a spreadsheet, and if
14 she has the violations --

15 MR. LENNINGTON: She's got spreadsheets, 02:03PM
16 yeah, and you can ask about these.

17 MR. HIXON: We asked about these yesterday,
18 and she had violations and indicated that there was
19 no indication as to the nature of violation.

20 Q Is that correct, Miss Gunter? 02:03PM

21 A The complaints database contains what the
22 allegation was and contains the result where it may
23 have been closed and fined or closed and no
24 violations or that kind of a disposition of it, but
25 whether the allegation is what actually the fine 02:03PM

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1 maybe took place on is not contained in that
2 database.

3 Q Would that database include any enforcement
4 actions referred to in this Paragraph A3?

5 A The complaints database would include any 02:03PM
6 complaints that were later enforced, but it would
7 not give too sufficient detail to answer those, and
8 the enforcement list that AEMS regularly keeps in
9 the course of their deal on fines only contains the
10 facility, case number, date, amount fined, violation 02:04PM
11 points, if any, and the amount deferred.

12 Q Okay. Which folder are you referring to?

13 A This is just numerous database listings so
14 that I could get to the files if I needed to.

15 Q Okay. Let's go ahead and make that Exhibit 20 02:04PM
16 to your deposition, and we've been copying those. I
17 think we've been putting a Post-It on it and the
18 State's attorneys have been making a copy of it to
19 provide to the court reporter.

20 MR. LENNINGTON: Do they mind if they put a 02:04PM
21 sticker right on that and then we can make a copy of
22 that?

23 MR. HIXON: Or if you just want to put a
24 Post-It on it and mark it 20 --

25 A You can put a sticker on it. 02:04PM

1 MR. HIXON: Put it on the entire folder.

2 A Oh, on the folder? Well, we haven't even
3 talked about some of these things.

4 Q We talked generally about the folder
5 yesterday. 02:05PM

6 MR. LENNINGTON: Well, let's not mark the
7 folder. Let's mark individual documents. I mean,
8 if you want to -- because they have a variety of
9 different things in there, and marking a folder
10 won't help if it's got a bunch of different 02:05PM
11 hodgepodge of unattached.

12 Q What's in that folder?

13 A PFOs in the watershed as of 8-25-08, fines
14 received and deferred, the information you asked me
15 for yesterday on new houses, Delaware County poultry 02:05PM
16 complaints, Adair County poultry complaints,
17 Cherokee County poultry complaints, Sequoyah County
18 poultry complaints, a memo describing if there were
19 any CAFO discharges in the watershed, poultry CAFOs
20 in Adair, Cherokee, Delaware and Sequoyah Counties, 02:05PM
21 a list of commercial applicators, another list of
22 commercial applicators, Adair County private
23 applicators, Cherokee County private applicators,
24 Delaware County private applicators, Sequoyah County
25 private applicators. 02:06PM

1 MR. HIXON: Okay. All of that information
2 is pertinent to the notice, the topics contained in
3 the notice.

4 MR. LENNINGTON: To several different
5 topics. You have a question on applicators. She's 02:06PM
6 got databases on applicators. She -- you have
7 questions about complaints. She's got stuff about
8 complaints. I don't see --

9 MR. HIXON: Yes, and --

10 MR. LENNINGTON: They're not numbered, the 02:06PM
11 pages are not numbered, and so I don't know what the
12 point is of marking the entire folder when she could
13 be going through there and you won't know exactly
14 what page or what document she is talking about. I
15 mean, you can have copies of all of that. There's 02:06PM
16 no problem with that. It's just how do we identify
17 on the written transcript what exactly are you
18 talking about?

19 MR. HIXON: Are you saying we can't mark
20 that entire folder as an exhibit to this deposition? 02:06PM

21 MR. LENNINGTON: Yeah, I'm saying --

22 MR. HIXON: If we need to call Judge Joyner
23 and discuss the issue, then we'll call Judge Joyner
24 and discuss the issues.

25 MR. LENNINGTON: That's fine. We can call. 02:07PM

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1 MR. HIXON: Let's give him a call because
2 all of that information is responsive.

3 MR. LENNINGTON: I'm saying you can mark --

4 MR. HIXON: We can cover it today or
5 whether we cover it when we reconvene, it's all 02:07PM
6 responsive.

7 MR. LENNINGTON: I'm just saying as a
8 practicality, it would make sense to mark
9 individual, you know, stapled packets instead of
10 marking the entire thing. That's all I'm saying. 02:07PM
11 Like you had one question about what was the last
12 registration and she has one page on there that's
13 the last registration. Why that should be in the
14 same exhibit as the number -- the private
15 applicators from Delaware County doesn't make a lot 02:07PM
16 of sense to me, and it would muddle your transcript,
17 but if you want to muddle the transcript --

18 MR. HIXON: Well, it's my deposition. If I
19 want to muddle the transcript, I'll muddle the
20 transcript.

21 MR. LENNINGTON: Okay. Go ahead. We can
22 mark --

23 MR. HIXON: Let's mark the entire folder.

24 MR. LENNINGTON: She has other folders
25 here. We can mark the entire stack as one exhibit 02:07PM

1 if you want.

2 MR. HIXON: Well, we might mark the other
3 folders as an exhibit, but we're marking this one
4 Exhibit 20.

5 MR. LENNINGTON: All right. That's fine. 02:08PM

6 Q Are there any other folders that you have with
7 you today that would contain information related to
8 any enforcement actions or any violations of any
9 water quality standards or any of the standards that
10 we've talked about in the Oklahoma Poultry Feeding 02:08PM
11 Operations Act or its regulations?

12 A Can I look?

13 Q Sure.

14 A No, aside from the complaint files themselves
15 that I brought and the poultry producer files 02:09PM
16 themselves that may contain information that matches
17 up to these.

18 Q Okay, and when you are referring to those
19 files, those are the documents contained in several
20 boxes? 02:09PM

21 A The boxes here in this room.

22 Q Okay, and that information is summarized in
23 the various sheets that are contained in this
24 Exhibit 20?

25 A Yes. 02:09PM

1 Q Okay. It was my understanding that the State
2 of Oklahoma, the Oklahoma legislature recently
3 enacted a phosphorus index for the Eucha-Spavinaw
4 watershed; is that correct?

5 A The legislature? 02:10PM

6 Q The legislature enacted a body of legislation
7 regarding the Eucha-Spavinaw watershed.

8 A Are you talking about the Eucha-Spavinaw
9 statute, the Eucha-Spavinaw Management Act?

10 Q I believe that's correct? 02:10PM

11 A That was approximately two years ago I think.
12 Yeah. That wasn't this sessions. It would have
13 been the '07 session.

14 Q Do you know when that became effective?

15 MR. LENNINGTON: Objection, outside the 02:10PM
16 scope of the notice. Go ahead and answer, if you
17 know.

18 A I don't recall which date. I don't remember
19 if it had an emergency clause or not.

20 Q But you think it was two years ago? 02:10PM

21 A Well, I know the session was the '07 session,
22 yeah, '07 session, which would have made it
23 effective if it had -- potentially on July 1st of
24 '97 if it had an emergency clause that they stated
25 that specific date. I just don't remember their 02:11PM

1 specific date or at the latest it would have been
2 November 1 of '97 -- '07.

3 Q '07?

4 A Yeah.

5 Q So July 1st, '07 or November 1st, '07? 02:11PM

6 A Yeah. I just don't remember if they had an
7 emergency clause.

8 MR. HIXON: We need to change break.

9 VIDEOGRAPHER: We are now off the Record.

10 The time is 2:11 p.m. 02:11PM

11 (Following a short recess at 2:11 p.m.,
12 proceedings continued on the Record at 2:33 p.m.)

13 VIDEOGRAPHER: We are back on the Record.

14 The time is 2:33 p.m.

15 Q Miss Gunter, before we broke, we were talking 02:33PM
16 about this Eucha-Spavinaw legislation. Has the
17 Department of Agriculture promulgated any
18 regulations under that Eucha-Spavinaw legislation?

19 A We did a set of rules both emergency and
20 followed up by permanent. 02:33PM

21 Q Okay. Do you know when those went into
22 effect?

23 A The emergency went into effect -- I believe it
24 was September or October of '97. I don't know that
25 precise date. 02:33PM

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1 Q You said of '97 again. 2007?

2 A I'm sorry. Yes, 2007.

3 Q Okay. Does the State of Oklahoma view the
4 Eucha-Spavinaw legislation and the rules promulgated
5 under that legislation as a proper set of litter
6 management protocols for the Eucha-Spavinaw
7 watershed?

02:34PM

8 MR. LENNINGTON: Object to the form.

9 A The documents we used on that were the
10 documents developed in reference to the court case.
11 It's -- I mean, it is what it is. We adopted it
12 verbatim to that.

02:34PM

13 Q Okay. My question is, does the State of
14 Oklahoma view that as a proper set of litter
15 management protocols for that watershed?

02:34PM

16 MR. LENNINGTON: Object to the form,
17 outside the scope of the deposition notice.

18 A I haven't reviewed that in some time. I mean,
19 I can't speak to it right now. I remember being
20 very involved in it at one time, but I haven't -- I
21 didn't review it for this. It was not -- since it
22 was Eucha-Spavinaw, I actually looked at it and
23 said, oh, it's Eucha-Spavinaw and threw it to the
24 side. So, I mean, it's what the court ordered in
25 that case. The legislature directed us to adopt

02:34PM

02:35PM

1 what the court ordered and, therefore, we did.

2 Q Okay. So you can't tell me whether the State
3 views that as a proper set of litter management
4 protocols for the Eucha-Spavinaw watershed?

5 MR. LENNINGTON: Objection, outside the 02:35PM
6 scope of the deposition notice.

7 A It's appropriate according to the court and
8 the legislature for the -- for the Eucha-Spavinaw
9 watershed for the two states.

10 Q Okay. How frequently are poultry operations 02:35PM
11 that are governed by the Poultry Feeding Operation
12 Act inspected?

13 A At least annually.

14 Q Okay, and what's done during those inspections
15 to determine whether a poultry operator is complying 02:36PM
16 with the best management practices required by
17 either the Act or the regulations or as may be
18 contained in the animal waste management plan?

19 A The inspector visits the facility, goes
20 through the records for the facility, all of the 02:36PM
21 records that are required to be maintained, which
22 includes information on land application and any --
23 how much they pulled out, those kinds of things, and
24 then they also do a site review look at the facility
25 itself, look at -- walk through the accessible land 02:36PM

1 app sites and just eyeball it really well to get a
2 really good idea of what appears to be going on out
3 there in comparison to the records and making sure
4 that those definitely match up and meet up with each
5 other.

02:36PM

6 **Q** Does the inspector do anything to determine
7 whether there's been a discharge or runoff of
8 poultry waste from the facility during that
9 inspection?

10 **A** I mean, that's part of his walking around the
11 site and looking at it. I'm looking for the record
12 keeping provisions. I'm not sure if that's
13 pertinent or not. I'm just trying to trigger my
14 memory. I'm not sure.

02:37PM

15 **Q** Okay. What would be in the records that would
16 determine whether there was a runoff or discharge of
17 poultry waste from a poultry operation?

02:38PM

18 **A** Okay. The records don't contain what I was
19 checking on.

20 **Q** Okay. What were you checking on?

02:38PM

21 **A** I was looking to see -- I know in the CAFO Act
22 there's a requirement that you keep records of all
23 discharges and runoff events from the site, that you
24 self-maintain a list of those that's checked on the
25 more -- on the EPA side, that side of it. I

02:38PM

1 wasn't -- I couldn't remember if there was a similar
2 provision in the Poultry Act. I don't see that in
3 the record keeping provision here.

4 Q Okay. Would that --

5 A So you wouldn't be -- so the inspector would 02:38PM
6 not be checking those types of records. He would
7 have to check the site and look through the
8 application records and such to make those types of
9 determinations.

10 Q Okay. So an operator under the Registered 02:39PM
11 Poultry Feeding Operation Act wouldn't have to do
12 this self-monitoring that you mentioned is in the
13 CAFO?

14 A No, it doesn't mean they don't have to do the
15 self-monitoring, but the CAFOs are required -- the 02:39PM
16 record keeping provisions for a CAFO are much
17 broader. I mean, there's a lot more records
18 involved in that setup because they do multiple
19 other things as a part of their license, but this
20 one is not one of the ones that requires that 02:39PM
21 particular item.

22 Q Okay. After a poultry operator receives its
23 animal waste management plan, is that plan discussed
24 with the operator by any representative of the State
25 of Oklahoma or ODAFF? 02:40PM

1 **A** After the plan is promulgated?

2 **Q** When the plan is delivered to the grower or at
3 any point in the process, does someone from the
4 State of Oklahoma or ODAFF sit down with the grower
5 or on a telephone conference or whatever and discuss
6 here's what your plan provides, here's the
7 limitations, here are the BMPs, et cetera, et
8 cetera?

02:40PM

9 MR. LENNINGTON: Object to the form. Go
10 ahead.

02:40PM

11 **A** Not as a routine matter. I don't recall that
12 being a part of their procedures, calling them
13 immediately. NRCS might. Remember, we are drafting
14 many of the plans for NRCS, and I don't remember
15 their procedures.

02:40PM

16 **Q** Okay. I'm not saying calls them immediately.
17 I'm just saying is there some point in that process
18 does someone from the State of Oklahoma or ODAFF
19 discuss the requirements of that animal waste
20 management plan with the poultry grower?

02:41PM

21 **A** I guess I'm not clear on your time frame.
22 Those are mailed from NRCS to the growers, so -- but
23 if there's questions regarding it and my inspector
24 is out there because my inspectors, although they're
25 required to do annual inspections, they're often out

02:41PM

1 there more often. If they're in the vicinity, they
2 drop by and visit with them just to see if they have
3 any questions or anything. So if they had any
4 questions regarding it or it was a brand new plan,
5 then my inspectors would be available to respond to 02:41PM
6 that stuff, the contract inspectors we have for that
7 particular facility. In addition, there -- people
8 frequently call the office when they don't
9 understand something, and we put either some of our
10 technical staff on the phone with them or Mr. 02:42PM

11 Parrish, Dan Parrish will discuss it with them.

12 Q Okay. If a grower calls in and asks a
13 question about their animal waste management plan,
14 is that something documented; are there notes taken
15 of those conversations? 02:42PM

16 A No, not ordinarily, no. It would just be a
17 technical assistance call where you just try to
18 describe to them.

19 Q Okay. There's not any kind of customer
20 service database where the information would be 02:42PM
21 recorded?

22 A Oh, no, no.

23 Q Okay. You made a statement regarding the plan
24 is mailed from the NRCS. Who writes the animal
25 waste management plans that are required by the 02:42PM

1 Registered Poultry Feeding Operations Act?

2 **A** A lot of different people.

3 **Q** Okay. Let's not talk about a lot of different

4 people. We talked about a lot of different people

5 in Exhibit 18, the list of people you have. Who is

02:42PM

6 authorized under Oklahoma law to write an animal

7 waste management plan that's required by the

8 Oklahoma Registered Feeding Operations Act?

9 **A** Well, the statutes or rules actually say that

10 NRCS drafts the plans or an entity approved by the

02:43PM

11 department.

12 **Q** Okay. Is there an entity approved by the

13 Department of Agriculture other than NRCS that

14 writes plans?

15 **A** We have had several people approach us about

02:43PM

16 it, but none ever actually submitted paperwork or

17 actually submitted any plans as a portion of it.

18 It's NRCS.

19 **Q** Okay, and we talked about a grant program

20 yesterday. Would some of those plans be written by

02:43PM

21 ODAFF employees for NRCS?

22 **A** Yes. We've got a cooperative agreement with

23 NRCS that -- and I don't know what you know, but the

24 NRCS trains technical service providers to draft

25 plans on their behalf, as well as their own staff to

02:44PM

1 draft plans, and we have -- I think we have six
2 people that have taken the training as technical
3 service providers pursuant to that, and once they
4 were all certified, NRCS had the grant and asked --
5 had the money for the grant and there were
6 discussions back and forth about whether or not we
7 could draft those plans as NRCS technical service
8 providers through a contract and ultimately all of
9 the issues were worked out and the -- and so we have
10 staff members that either part time or full time
11 contracted. They're all contract employees. None
12 of them are actually FTEs with the agency. We'll
13 draft those plans and prepare them, and I believe
14 the way the process works is they prepare two
15 copies. They mail them both to NRCS. NRCS
16 distributes them to the grower, and then the grower
17 would then send their extra copy of the plan back to
18 the department because they're required to have that
19 in their file, the updated plan.

02:44PM

02:44PM

02:45PM

20 Q Okay. I think you answered one of my next
21 questions in that explanation. So thank you.
22 During the annual inspections that are performed by
23 the poultry inspectors, do they evaluate the animal
24 waste management plans for effectiveness?

02:45PM

25 MR. LENNINGTON: Object to the form.

02:45PM

1 **A** No. The inspectors don't get that detailed
2 unless there's a specific issue and then they
3 will -- not in a routine inspection, but if there's
4 a specific issue they note at the facility, they
5 will then look at the plan and work with the
6 producer on it.

02:46PM

7 **Q** Okay. How long is a plan; what's the
8 effective date for a plan?

9 **A** Six years.

10 **Q** Okay. At the end of that six years, does the
11 plan writer or any other entity evaluate the
12 effectiveness of that plan and make adjustments to
13 the renewal plan?

02:46PM

14 **A** They draft a brand new plan for them based on
15 current conditions.

02:46PM

16 **Q** Okay. They start from scratch?

17 **A** Right. It's a replacement plan.

18 **Q** Okay, and it takes into consideration the same
19 types of information, the types of soils and slope
20 and those kind of issues and soil tests and litter
21 tests?

02:46PM

22 **A** But based on the new data that they obtained
23 at that time or if there's been any changes.

24 **Q** Okay. Is there any kind of evaluation process
25 done on the expiring plan to determine how effective

02:46PM

1 it was?

2 A No one with the State does that that I know
3 of.

4 Q Okay. Do you know if anybody within NRCS does
5 that?

02:47PM

6 A I don't know.

7 Q Can you tell me whether there's any limitation
8 in Oklahoma law regarding the placement of a poultry
9 facility with regard to scenic rivers or a nutrient
10 limited watershed?

02:48PM

11 A No, not for the Illinois River watershed.

12 Q Can you tell me what the Title 2, Section
13 10-9.8A applies to?

14 A I can tell you what it was -- yeah, what it
15 should apply to.

02:50PM

16 Q Okay. What should it apply to?

17 A It's making reference to Title 18, Section
18 951, which is essentially the corporate farming law
19 for the State of Oklahoma, and it says no new or
20 expanding poultry feeding operations operated by
21 entities prohibited in Section 951 of Title 18 --
22 basically what it's saying is integrators can't --
23 the company themselves can't own a new operation
24 within the 100-year flood plain or within any of
25 these other areas.

02:51PM

02:51PM

1 Q Okay. So this applies strictly to poultry
2 integrators?

3 A Right, entities that were prohibited by
4 Section 951 of Title 18.

5 Q Okay. Is there anything in this section that 02:51PM
6 would prohibit a private farmer from building a new
7 facility within the 100-year flood plain or one mile
8 of a designated scenic river?

9 MR. LENNINGTON: Object to the form.

10 A Nothing in this section would apply to a 02:51PM
11 private farmer as an individual, as just an
12 independent person out there.

13 Q Okay. Just as an example, we talked about the
14 Felts yesterday had a new operation. We don't know
15 where that is, but assuming it's within one mile of 02:52PM
16 a scenic river, there wouldn't be anything to
17 prohibit them from placing that facility within one
18 mile of a scenic river?

19 MR. LENNINGTON: Object to the form.

20 A That's correct. 02:52PM

21 Q Do you know how long this Section 9 or 10-9.8A
22 has been in effect?

23 A It was effective August 23rd of 2002.

24 Q Do you know of any reason this wouldn't apply
25 to the poultry operator that's not -- 02:53PM

1 MR. LENNINGTON: Object to the form.

2 Q -- a corporate farmer?

3 MR. LENNINGTON: Object to the form.

4 A It would not be defined as a corporate farming
5 entity that was prohibited by Title 18.

02:53PM

6 Q We talked a little bit earlier about the
7 educational requirements required under the
8 Registered Poultry Feeding Act. Who provides that
9 education?

10 A The extension service, OSU, OCES.

02:53PM

11 Q I'll hand you what's been marked as Exhibit 12
12 to your deposition. Have you seen this document?

13 A Yes, I've seen this.

14 Q Do you know who this -- who is the audience
15 for this document, which I believe is a pamphlet?

02:54PM

16 MR. LENNINGTON: Object to the form.

17 A It's aimed at producers.

18 Q Okay. Do you know if this is part of the
19 educational materials produced by the cooperative
20 extension?

02:54PM

21 A I don't know if they hand this out at those
22 things or if it's just strictly an informational
23 packet about what they do and what education is
24 about.

25 Q Okay, and I'll just represent I obtained this

02:54PM

1 copy off the cooperative extension website. If
2 you'll turn to the second page of this document,
3 there's a description of the regulations beginning
4 in that middle column. Is there any mention in this
5 document of the no discharge or no runoff standard? 02:55PM

6 **A** You're just -- I'm on the back side here on
7 the second page. I don't see a specific reference
8 to that.

9 **Q** Okay. If you go to the far right column, this
10 heading, NRCS Waste Utilization Standards, and then 02:56PM
11 there's a table. Would you agree that this appears
12 to contain the same information that we've looked at
13 in the Table 8 to the NRCS Code 590?

14 **A** It appears to be a very summary form of some
15 of the information from those things. 02:56PM

16 **Q** Okay, and I know Dan is going to object to
17 this, but would you agree with me that this is the
18 white sign that we were talking about earlier?

19 MR. LENNINGTON: Objection, form.

20 **A** No, it's not a white sign. 02:56PM

21 **Q** It's not a white sign. What is the
22 significance of this document to the State of
23 Oklahoma?

24 MR. LENNINGTON: Object to the form.

25 **A** What do you mean by significance to the State? 02:57PM

1 Q Well, this document for all intents and
2 purposes was prepared by the Oklahoma State
3 University Cooperative Extension for distribution or
4 at least to be made available to poultry growers,
5 and it contains a summary of regulations and litter
6 application rates.

02:57PM

7 A Uh-huh.

8 Q I guess -- does the State of Oklahoma stand
9 behind this as an accurate communication of those
10 regulations and litter application rates to poultry
11 growers in the Illinois River watershed?

02:57PM

12 MR. LENNINGTON: Object to the form.

13 A It doesn't contain everything by any means
14 that's in the statutes, and it even describes itself
15 as a brief overview of the Oklahoma Registered
16 Poultry Feeding Operations Act. So I mean, it is
17 what it is, a brief overview, and education to
18 growers is important, so this is a great starting
19 point perhaps.

02:57PM

20 Q Okay. So it's accurate as a starting point?

02:58PM

21 MR. LENNINGTON: Object to the form.

22 A Without line by lining it and matching it up,
23 it appears to be accurate as a brief overview.

24 Q Okay. I don't want to spend a lot of time on
25 this, but this is something we've talked about a

02:59PM

1 little bit for the prior two days, and I only have
2 one extra copy. This is Exhibit 17 to your
3 deposition, and this is the Feeding Operations and
4 Animal Unit Capacity Act. I obtained this copy from
5 the Department of Ag website. Is this the amended 02:59PM
6 renumbered CAFO Act that we discussed a little bit
7 yesterday?

8 **A** Yes.

9 **Q** Okay. I want to refer you to Page 12 of this
10 document, which is part of Section 20-48. Looks 03:00PM
11 like it's C4A1. This is describing best management
12 practices. Can you read the C4A1 into the Record?

13 **A** Land application of animal waste shall not
14 exceed the nitrogen uptake of the crop coverage or
15 planned crop planting with any land application of 03:00PM
16 wastewater or manure. Where local water quality is
17 threatened by phosphorus, in no case shall the
18 applicant or licensee exceed the application rates
19 in the most current Natural Resources Conservation
20 Service publication titled Waste Utilization 03:01PM
21 Standard.

22 **Q** Okay. Is that Waste Utilization Standard
23 there, is that the same thing as this code 509 that
24 we've been talking about?

25 **A** At the time we referred to that, I believe the 03:01PM

1 Waste Utilization Standard was known as Standard
2 633.

3 Q Okay. What is Standard 633?

4 A It was one of the NRCS documents prepared that
5 discussed these types of issues, but I don't think 03:01PM
6 currently Oklahoma has a Waste Utilization Standard
7 633 anymore. I believe the 590 replaced that, so
8 it's the -- the most current publication is the 590
9 that we follow.

10 Q Okay. So that would be the March 2007 Code 03:02PM
11 590 that we've discussed earlier?

12 A Right.

13 Q Okay, and as I understand the section you just
14 read, this is requiring an agronomic rate of
15 wastewater or manure based on nitrogen? 03:02PM

16 A Yes.

17 Q And limiting phosphorus based on the Code 590;
18 is that correct?

19 A Correct, for where local water quality is
20 threatened by phosphorus. 03:02PM

21 Q Okay, and this is a best management practice
22 in the CAFO Act; is that -- is my understanding of
23 that correct?

24 A Yes. It's one of the -- it's one of the
25 animal waste animal plan criteria. 03:02PM

1 Q Okay, and this would apply to the poultry
2 CAFOs?

3 A Yes. Anything that's a CAFO would be under
4 this.

5 Q Okay. It's my understanding that under the 03:02PM
6 Registered Poultry Feeding Operation Act, if a
7 poultry operator is found in violation of the
8 Registered Poultry Feeding Operation Act, there's a
9 process or procedure by which that grower can then
10 be determined by the Department of Agriculture or 03:03PM
11 the state board of agriculture to be subject to this
12 CAFO Act; is that correct?

13 A Yes, it is.

14 Q Okay, and at that point that grower who's
15 violated the Registered Poultry Feeding Operations 03:03PM
16 Act and gone through this procedure would then be
17 subject to this best management practice that we've
18 just read in the Section 2048C4A1?

19 A Amongst others. I mean, it's a big package
20 when you get into the CAFO Acts. 03:03PM

21 Q Okay. Has the State of Oklahoma ever
22 regulated poultry litter or -- well, has the State
23 of Oklahoma ever regulated poultry litter as a
24 hazardous waste or a hazardous substance?

25 MR. LENNINGTON: Object to the form. 03:04PM

1 **A** The State has had other tools to work with
2 poultry litter with the Acts that are on the books
3 and it's not -- I don't know of any point in time
4 other than the allegations contained in the lawsuit
5 that one of the individual agencies brought any type 03:04PM
6 of case related to that other than the current
7 allegations.

8 **Q** Is that a no?

9 **A** Yes.

10 MR. LENNINGTON: Object to the form. 03:04PM

11 **Q** Okay. Are you familiar with -- I think it's
12 Title 2, Section 2-18.1?

13 **A** Yes.

14 **Q** Okay. Do you know what that requires or what
15 that section pertains to? 03:05PM

16 **A** That's the section that pertains to general
17 environmental pollution contaminant issues.

18 **Q** Okay. Do you know if that Act has been or
19 that provision has been recently amended?

20 **A** Yes. That provision was amended about two, 03:05PM
21 maybe three years ago.

22 **Q** Okay. Do you know what that amendment
23 pertains to?

24 **A** It -- the provision that was amended in '07
25 was the Subsection C portion of 18.1. 03:06PM

1 Q Okay. What does that section pertain to?

2 A C1 says manure shall not be defined as or be
3 considered a hazardous substance or hazardous waste
4 as those terms are defined by state law.

5 Q Okay. Prior to the enactment of that Section 03:06PM
6 C1, was poultry litter or animal manure regulated as
7 a hazardous waste or hazardous substance under
8 Oklahoma law?

9 A Under state law?

10 Q Under state law. 03:06PM

11 A I don't know of a specific case, but it
12 certainly probably could have been prior to this
13 enactment.

14 Q Do you know whether the State of Oklahoma has
15 ever regulated poultry litter as a solid waste? 03:07PM

16 MR. LENNINGTON: Object to the form.

17 A It's been discussed with DEQ over the years.
18 Keeping in mind that poultry waste includes poultry
19 carcasses, there have been occasions where DEQ would
20 receive a complaint, and we would look at it as 03:07PM
21 whether it was a landfill issue or whether it was
22 strictly an Oklahoma agriculture carcass disposal
23 issue.

24 Q Okay. Were those instances or those
25 discussions limited to poultry carcasses? 03:07PM

1 **A** Typically I remember one time where it was a
2 discussion that was not in the watershed, but it was
3 a discussion of whether or not that's actually a
4 landfill or not. I mean, it was ultimately
5 determined that the department's regulation of the
6 poultry carcasses and burial and the various issues
7 associated with that were the appropriate way to go
8 at that time, the poultry waste, meaning litter,
9 carcasses, a combination of whatever. Mid to late
10 '90s there was some conversations between DEQ and
11 the department.

03:08PM

03:08PM

12 **Q** Okay. Was there ever anything as far as rules
13 or regulations that were promulgated out of those
14 conversations?

15 **A** No, nothing came out of those conversations.

03:09PM

16 **Q** Okay. Are you aware of anything that's
17 presently in effect that would regulate poultry
18 litter or poultry carcasses as a solid waste?

19 **A** Pursuant to state law?

20 **Q** State law.

03:09PM

21 **A** Or pursuant to federal law? I think federal
22 law, certainly it could, but state law, many of the
23 provisions in DEQ's provisions could go either way.
24 So there's language out there that certainly could
25 be structured or certainly could be interpreted and

03:09PM

1 enforced in such a manner that it would treat it as
2 solid waste.

3 Q Okay, and that's under state law?

4 A Under DEQ's laws, yes, under the state
5 environmental quality code. 03:09PM

6 Q Okay, and you mentioned federal law. Do you
7 know what DEQ's responsibility is as far as
8 enforcing RCRA?

9 MR. LENNINGTON: Objection, outside the
10 scope of the deposition notice. 03:10PM

11 A I haven't reviewed that material.

12 Q Okay. Do you know if DEQ regulates poultry
13 waste or -- as it's defined in the statutes as a
14 solid waste under RCRA?

15 A Under federal? 03:10PM

16 Q Under federal law.

17 A I've not reviewed that. I don't know of them
18 doing so.

19 Q Okay. Do you know if DEQ has enforcement
20 authority under RCRA? 03:10PM

21 MR. LENNINGTON: Objection, outside the
22 scope of the deposition notice.

23 A I haven't reviewed those provisions, and I
24 don't know that I've ever reviewed DEQ's provisions
25 related to RCRA. I just -- so I don't know. I 03:10PM

1 don't know exactly what that authority is.

2 Q Okay. Let's go back to Exhibit 10, which is
3 the water quality standards implementation plan. I
4 think we talked earlier about the 3545.1-7 animal
5 waste programs. If you continue on in that same 03:11PM
6 section, the 45-1-7, go down -- let's see. Looks
7 like it's C -- C2. Can you read that into the
8 Record, please?

9 A The entire paragraph?

10 Q Yes, please. 03:12PM

11 A The animal waste programs can affect
12 groundwater and surface water beneficial uses if
13 facilities are not designed and operated properly.
14 The application process is targeted at removing the
15 possible threat of pollution to the waters of the 03:12PM
16 state by not allowing any discharge to surface water
17 except in limited circumstances by promoting
18 recycling and beneficial reuse of water, by not
19 permitting any hydrologic connection between waste
20 storage facility and groundwater, by preparing or 03:12PM
21 reviewing animal waste management plans, nutrient
22 waste management plants or equivalent documents,
23 emphasizing best management practices and
24 conservation measures and by routine inspections of
25 regulated CAFOs, LFMOs and poultry feeding 03:12PM

1 operations.

2 Q Okay. Do you, as the State of Oklahoma, agree
3 with this Section C2 that you've just read?

4 MR. LENNINGTON: Object to the form.

5 A It's -- I agree it's a summary of some of the 03:13PM
6 department's animal waste programs.

7 Q Okay. Would you agree that these are things
8 that ODAFF is currently doing?

9 A Yes.

10 Q With regard to poultry feeding operations 03:13PM
11 specifically or CAFO, poultry CAFOs, would you agree
12 that ODAFF is preparing or reviewing animal waste
13 management plans, nutrient management plans or the
14 equivalent documents?

15 A Yes. 03:13PM

16 Q And would you agree they're emphasizing best
17 management practices among feeding operations and
18 poultry CAFOs?

19 A Certainly the statute contains those things,
20 and we work with the implementation. 03:14PM

21 Q Okay, and would you agree that these practices
22 that ODAFF is currently engaging in are removing the
23 possible threat of pollution to the waters of the
24 state?

25 MR. LENNINGTON: Object to the form. 03:14PM

1 **A** Can you state that again? I'm sorry.

2 MR. HIXON: Can you read the question back?

3 (Whereupon, the court reporter read
4 back the previous question.)

5 **A** Well, these and other criteria. I mean, this 03:14PM
6 is a summary form, but when taken in as a whole,
7 we're going in that direction. I mean, the threat
8 is not removed because there's poultry operations
9 there. So we have to continue to inspect those
10 operations and such as that to try to stay diligent 03:14PM
11 and on top of it.

12 **Q** Okay. This section says that the preparing
13 and reviewing animal waste plan, nutrient management
14 plan, equivalent documents, emphasizing best
15 management practices, these practices specifically 03:15PM
16 identified with regard to poultry feeding operations
17 are removing the possible threat of pollution to the
18 waters of the state.

19 MR. LENNINGTON: Objection, misstating the
20 statute. 03:15PM

21 **Q** Is that not correct?

22 **A** It says the application process is targeted at
23 removing the possible threat of pollution to the
24 waters of the state.

25 **Q** Okay. What's in the application process 03:15PM

1 that's targeted at removing --

2 **A** And this paragraph is not just describing
3 poultry. It's describing CAFOs, LMFOs, et cetera.
4 So the application process, for example, for CAFOs
5 is very, very extensive. It's two notebooks full of 03:16PM
6 information that they are required to provide to us
7 regarding engineering and all kinds of aspects, as
8 well as their nutrient management plans, as well as
9 their pollution prevention plan and such, so they're
10 targeted. The whole point is to keep pollution from 03:16PM
11 occurring, so it all is targeted towards that, both
12 the CAFO Act, LMFO or the Swine Feeding Operations
13 Act and the poultry applicators, as well as the
14 poultry feeding operations material.

15 **Q** Okay. Go ahead and read the paragraph, 03:16PM
16 Section D 1.

17 **A** All programs are involved in regulating the
18 animal and poultry feeding operations to assure that
19 facilities meet the minimum requirements. The
20 programs evaluate facility location, watershed, 03:16PM
21 soils, groundwater data, stream data, flood
22 information, water samples, manure and litter
23 samples and other pertinent information. The
24 application process evaluates the potential effects
25 of the proposed operation on the waters of the state 03:17PM

1 to ensure that both groundwater and surface water
2 are not polluted. Potential impacts on beneficial
3 uses designated in water quality standards will be
4 further evaluated during the license application
5 process to assist elimination of the threat to
6 nutrient vulnerable groundwaters and nutrient
7 impaired waters.

03:17PM

8 Q Okay. I'll stop you there. The underlined
9 section, this was obtained off the ODAFF website,
10 and it appeared that it was a proposed plan or the
11 underlined portion is additions to this Water
12 Quality Standards Implementation Act.

03:17PM

13 A Where did you take this from the website?

14 Q The ODAFF website where it lists all of the
15 rules and regulations.

03:17PM

16 A Proposed rules?

17 Q Yes.

18 A Okay. Yes. This was the recent version
19 submitted, the one this past year that was submitted
20 to the legislature.

03:18PM

21 Q Okay. Are the underlying portions, are those
22 additions to the Water Quality Standards
23 Implementation Act?

24 A Yes.

25 Q Okay, and have these standards -- have these

03:18PM

1 additions been adopted as part of the Water Quality
2 Standards Implementation Act for ODAFF?

3 A As of July 1st, 2008, they became effective.

4 Q Okay. So anything that's not underlined would
5 have been in effect prior to July 1st, 2008?

03:18PM

6 A Correct.

7 Q Do you agree with this Section D1 that you've
8 just read?

9 MR. LENNINGTON: Object to the form.

10 A I mean, as a summary, a summary of technical
11 information and procedures for implementation of the
12 standards? It's a good overall basic summary of the
13 types of things that we do to reach this.

03:18PM

14 Q Okay. You agree with it as a summary?

15 A It's a summary.

03:19PM

16 MR. HIXON: Let's go ahead and take a
17 break.

18 VIDEOGRAPHER: We are now off the Record.
19 The time is 3:20 p.m.

20 (Following a short recess at 3:20 p.m.,
21 proceedings continued on the Record at 3:25 p.m.)

03:20PM

22 VIDEOGRAPHER: We are back on the Record.
23 The time is 3:25 p.m.

24 Q Miss Gunter, I think we're nearing the end, at
25 least for this session. I direct you back to

03:25PM

1 Exhibit 8B and I refer you to 3517-5-5.

2 A Hang on a minute. I've lost 8B. Okay. I'm
3 sorry. Go ahead.

4 Q 17-5-5C. This states, storage and land
5 application of poultry waste shall not cause a 03:26PM
6 discharge or runoff of significant pollutants to the
7 waters of the state or cause water quality
8 violations to the water of the state. What does
9 that provision mean generally speaking?

10 A It means you should not have discharge or 03:26PM
11 runoff.

12 Q Okay. I'm going to go back to a very familiar
13 topic, and it's my big white sign again. What's the
14 criteria used to measure or to determine whether
15 there's a violation of this provision, i.e., whether 03:26PM
16 there's a discharge or runoff of significant
17 pollutants to the waters of the state; what's the
18 criteria for measuring significant pollutants I
19 guess is my question?

20 A Well, I think it would be the same answer I 03:26PM
21 gave you on the way we make a determination if
22 something has significantly run off and we can do
23 water sampling and, again, that's the
24 upstream/downstream. If we need to do something
25 from the soil of the litter, we can take those 03:27PM

1 samples in addition and determine if there's a
2 significant change between upstream and downstream.
3 We're looking for no change, but any change gives us
4 an indication there's something going on.

5 Q Okay. What is a significant change; what 03:27PM
6 criteria is used to determine whether a change is a
7 significant change?

8 A That's going to be something that one of
9 our -- that we would rely on one of our technical
10 folks, one of our contract folks to determine, to 03:27PM
11 look at a specific set of samples, specific set of
12 results from all of that whole package, and
13 determine if, you know, if it's -- well, it would
14 depend on the parameters, but it would depend on if
15 there is an increase to the upstream from the 03:28PM
16 downstream, and if the downstream results in an
17 increase, then they will come to us and say, wow,
18 this is over the top, which would be significant or
19 they'll come to us and say, yeah, it's increased, we
20 need to do some further -- there's definitely an 03:28PM
21 increase, we need to do further checking.

22 Q Okay, and I'm asking you how do you determine
23 whether it's over the top. That a subjective
24 process; is it an objective process; what's the
25 measure? 03:28PM

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1 **A** It would be probably -- I mean, the scientific
2 guys have what they're looking for in their heads.

3 They, you know -- I mean, I can look at -- if I get
4 a sample, for example, that just looking at a basic
5 parameter of nitrogen and they're giving me a

03:28PM

6 groundwater well sample and I look at it and it's
7 3,000, well, I know that's significant because
8 that's way over the top. I mean, number one, you

9 have your EPA drinking water standard of 10, but
10 even at 20, 30, 40, 50, we start getting real

03:29PM

11 nervous, especially when you are near 20 on that
12 stuff, but at one or two over that ten, we start,
13 okay, that's an increase, we need to check out more,
14 but when you start getting into the really high

15 numbers on those, then you start looking at it and
16 go, okay, it doesn't matter, you know, what the

03:29PM

17 drinking standard is, this is way too much and
18 that's an over-the-top type, and we know there's
19 definitely a problem out there. We've got to go and
20 figure out precisely the source.

03:29PM

21 **Q** Okay. My understanding of what you just said,
22 and if I misstate this, please clarify me, but the
23 example you gave, there's some kind of base
24 numerical measurement for the constituent that you
25 described; is that correct?

03:29PM

1 **A** For nitrate, yes, for groundwater, drinking
2 groundwater.

3 **Q** Okay, and this refers generically to
4 pollutants?

5 **A** Correct. 03:30PM

6 **Q** Do you know what pollutants are governed
7 within this term as it's used in these regulations?

8 **A** Well, a pollutant is anything that pollutes
9 water, and there's a definition of pollutants if I
10 can remember where it is. There's a pollutant 03:30PM

11 definition in Title 27A, 1-1-201, and it's a
12 pollutant includes but it is not limited to dredged
13 spoils, solid waste, incinerator residue, sewage,
14 garbage, sewage sludge, munitions chemical waste,
15 biological materials, radioactive materials, heat, 03:31PM
16 wrecked or discarded equipment, rock, sand, cellar
17 dirt and industrial, municipal and agribusiness
18 waste.

19 **Q** Okay. Is it your testimony that that's what
20 is intended to be defined, this pollutant that's in 03:31PM
21 the regulation, is that --

22 **A** I think there's additional ones.

23 **Q** Or is there a separate definition of
24 pollutants in these regulations?

25 **A** Another definition that is incorporated into 03:31PM

1 our Title 2 statutes is at 2A-2 -- no. Sorry,
2 Section 2A-1. The definition of pollutant means
3 stretch, spoiled solid waste, incinerator residue,
4 sewage, garbage, sewage sludge, munitions, chemical
5 waste, biological materials, radioactive materials,
6 heat, wrecked or discarded equipment, rocks, sand,
7 cellar dirt and industrial, municipal and
8 agricultural waste discharged into waters of the
9 state.

03:32PM

10 Q Okay. So it takes into account all kinds of
11 things?

03:32PM

12 A Yeah. I mean, the term pollutants can be
13 many, many, many things.

14 Q Okay. Are each of those various things that
15 fall within pollutants, using your nitrate example
16 just as an analogy, for each of those items in the
17 pollutant definition, is there a corresponding
18 numeric limitation or description that would
19 determine what is acceptable under state or federal
20 law?

03:32PM

03:33PM

21 A Well, under the water quality standards there
22 is a phosphorus, an in-stream phosphorus number that
23 is the -- if I get the number right -- .037.

24 Q Okay. We talked about that a little bit
25 yesterday?

03:33PM

1 **A** Uh-huh, and that's the scene rivers water
2 quality standards that applies to the Illinois
3 River. Well, I guess it's the Tenkiller watershed
4 is how it's worded, but the -- that's the criteria
5 that is -- that's on target to get the health of the
6 river to, and it's not there currently. So any
7 addition at all to the current river would be in
8 violation of that standard, any addition at all,
9 whether it's a minute -- if we put in .05, that's
10 too much.

03:33PM

03:34PM

11 **Q** Okay. .037, that applies only to the
12 phosphates; is that correct?

13 **A** For the river. It's a measurement of what's
14 actually in the river, not a measurement of where --
15 of the particular source. It's the measurement that
16 adds to the health of the river, and it's a
17 phosphorus standard.

03:34PM

18 **Q** Okay. So is that -- my understanding of your
19 testimony, that .037 standard determines what is
20 significant for purposes of this provision?

03:34PM

21 **A** It helps. It would go into the determination
22 of that, yes.

23 **Q** Okay, and how would it go into the
24 determination of significant pollutants?

25 **A** Well, if you do the upstream and downstream

03:34PM

1 sampling and you've got -- you can target the runoff
2 -- there's runoff that's occurred, you have -- you
3 know what the phosphorus is upstream in that stream
4 and you come up with a larger number downstream in
5 the same -- on either side of that facility, and you
6 go through and go through the fingerprinting and
7 everything else, you can target that that location
8 is adding phosphorus to it, and any addition with
9 that standard, especially if your upstream sample is
10 already, say, a .05, then when you get downstream
11 and you are at .06, you're definitely in violation
12 if you're the one that's the source of that.

03:35PM

03:35PM

13 Q Okay, and that process that you just
14 described, sampling upstream and downstream and
15 doing the fingerprinting, that's a very elaborate
16 process, a complex process; would you agree with
17 that?

03:35PM

18 A Yes, it can be very complex, it can be.

19 Q Okay. If I'm Farmer Jones and I've got this
20 piece of property and I've fallen into this
21 situation, how do I know whether I've made a
22 significant or my runoff is of significant
23 pollutants -- well, let me strike all of that. How
24 would I know whether I'm in violation of this
25 provision?

03:35PM

03:36PM

1 **A** If you are having runoff, you're in violation
2 of this provision. That's your first step right
3 there. This provision is just an addition to what
4 the statute already says, is no runoff, no
5 discharge. So this is the rule incorporating that.
6 It gives us some additional language there to view
7 and to look at the water quality violation and all
8 that, but plain and simple, it's -- if there's no
9 runoff, you can't be in violation of it.

03:36PM

10 **Q** Okay. So am I understanding your testimony
11 that you're saying that this discharge or runoff of
12 significant pollutants is the same as the no
13 discharge standard that we've discussed previously?

03:36PM

14 **A** It's part of the rule that is based on the
15 statute that requires no discharge and no runoff.
16 It's just an additional way to -- for the -- to
17 impress upon the producer what we're talking about
18 and, again, it's not the only thing out there. It's
19 not the only thing we hang our hat on, but it's
20 definitely one of the criteria we look at.

03:37PM

03:37PM

21 **Q** Okay. That wasn't my question. My question
22 is, is the discharge of runoff of significant
23 pollutants, is that the same thing as the no
24 discharge standard that we've discussed before?

25 **A** No. It's worded slightly differently in that

03:37PM

1 it's a discharge or runoff of significant
2 pollutants. So it's more specific than the no
3 discharge standard. It doesn't abrogate the no
4 discharge, no runoff standard.

5 Q Okay. I didn't ask you if it abrogated. I 03:37PM
6 asked, are they the same standard or are they
7 different?

8 A No. It's a piece.

9 Q Okay. How is this different because what I
10 heard you testify to just a moment ago was it was 03:38PM
11 the same?

12 A I don't -- that's not what I said. I didn't
13 say it was the same. I said it was a further
14 implementation of it, but it's still a piece of
15 the -- the standard is none, zero. 03:38PM

16 Q Okay. So is it your testimony that anything
17 over none, zero, is significant?

18 A No. I said that anything over none is a
19 violation of the statute, and when we get into
20 significant, it's a big violation, and we're going 03:38PM
21 to really start hammering extra hard on it.

22 Q Okay, and where does it say that in these
23 regulations?

24 A We have enforcement provisions.

25 Q Okay. Is that where the difference would be? 03:38PM

1 **A** We make decisions all the time on -- I mean,
2 that's just a normal process of if it's a violation
3 that is sufficient enough, we need to go get an
4 injunction and shut them down, versus whether it's a
5 violation that we need to set out corrective actions
6 for them and fine them or just set out corrective
7 actions. There's many, many levels of enforcement,
8 potential enforcement actions that can be taken.

03:39PM

9 **Q** Okay. What level above no discharge does a
10 discharge or runoff become significant?

03:39PM

11 **A** It's a violation if it runs off. How we deal
12 with that particular violation is going to take a
13 number of factors into account, including how much
14 was discharged, including what our sampling results
15 showed up, including did the operator take steps to
16 contain the discharge or runoff, did the operator --
17 I mean, there's a bunch of different criteria that
18 we're going to look at to determine what type of
19 enforcement action. It's not going to be okay at
20 .04 we take enforcement action but at .05 we take
21 injunctive action. It's not that way. It's a
22 case-by-case basis for each of those enforcement
23 criteria.

03:39PM

03:40PM

24 MR. HIXON: Okay. I'm done for the day.

25 MR. LENNINGTON: All right.

03:40PM

1 MR. HIXON: Do you have anything or you
2 want to wait?

3 MR. LENNINGTON: Why don't I ask them now
4 so that we don't forget. We'll just wait. I'll
5 make a better list than my scratching.

03:40PM

6 VIDEOGRAPHER: This concludes the
7 deposition of Miss Tina Gunter. We are now off the
8 Record. The time is 3:40 p.m.

9 (Whereupon, the deposition was recessed
10 at 3:40 p.m.)

03:40PM

SIGNATURE PAGE

I, Teena Gunter, do hereby certify that the foregoing deposition was presented to me by Lisa A. Steinmeyer as a true and correct transcript of the proceedings in the above styled and numbered cause, and I now sign the same as true and correct.

WITNESS my hand this _____ day of _____, 2008.

TEENA GUNTER

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2008.

Notary Public

My Commission Expires:

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, Lisa A. Steinmeyer, Certified
Shorthand Reporter within and for Tulsa County,
State of Oklahoma, do hereby certify that the above
named witness was by me first duly sworn to testify
the truth, the whole truth and nothing but the truth
in the case aforesaid, and that I reported in
stenograph her deposition; that my stenograph notes
were thereafter transcribed and reduced to
typewritten form under my supervision, as the same
appears herein.

I further certify that the foregoing 83
pages contain a full, true and correct transcript of
the deposition taken at such time and place.

I further certify that I am not attorney
for or relative to either of said parties, or
otherwise interested in the event of said action.

WITNESS MY HAND AND SEAL this 26th day
of September, 2008.

LISA A. STEINMEYER, CRR
CSR No. 386

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TEENA GUNTER 30(b)(6)
Volume II

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